

Woodlands at Laurel Hill,

Special Permit Application – Senior Residence:

- Draft Legal Documents- Reciprocal Easement Agreement

ACCESS AND CROSS EASEMENT AGREEMENT

This Access and Cross Easement Agreement (this "Agreement") dated as of _____, 200__ by and among (i) **RECREATIONAL REALTY TRUST LLC** (together with its successors and assigns, "RRT"), a Massachusetts limited liability company having an office at 676 Elm Street, Suite 300, Concord, MA 01742; (ii) _____ (together with its successors and assigns, "Condominium Land Owner"), a _____ having an office at _____, (iii) _____ (together with its successors and assigns "Apartment Land Owner"), a _____ having an office at c/o AvalonBay Communities, Inc., 2900 Eisenhower Avenue, Third Floor, Alexandria, VA 22314, and (iv) _____ (together with its successors and assigns "Treatment Plant Land Owner"), a _____ having an office at c/o AvalonBay Communities, Inc., 2900 Eisenhower Avenue, Third Floor, Alexandria, VA 22314. (RRT, Condominium Land Owner, Apartment Land Owner and Treatment Plant Land Owner, and their successors and assigns sometimes are hereinafter referred to generically as an "Owner" and collectively as the "Owners").

WITNESSETH:

WHEREAS, RRT is the Owner of certain parcels of land consisting of approximately 8.32 acres of land in Westford, Massachusetts, all as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "RRT Land") and shown on that certain plan of land attached hereto as **Exhibit B** entitled "Easement Plan of Land in Acton and Westford, MA" dated _____, 200__ and prepared by Stamski & McNary, Inc., Scale 1"=100' (the "Easement Plan") as "RRT Land", on which RRT intends to develop approximately [REDACTED] single family homes containing a total of ____ bedrooms (the "RRT Project"); and

WHEREAS, Apartment Land Owner is the Owner of certain parcels of land consisting of approximately 28.17 acres of land in Acton and Westford, Massachusetts, all as more particularly described on **Exhibit C** attached hereto and incorporated herein by reference and shown on the Easement Plan as the "Apartment Land" (the "Apartment Land"), on which Apartment Land Owner intends to develop an approximately 380-unit apartment complex containing a total of [REDACTED] bedrooms (the "Apartments Project"); and

WHEREAS, Condominium Land Owner is the owner of approximately 17.22 acres of land in Acton and Westford, Massachusetts, all as more particularly described on **Exhibit D** attached hereto and shown on the Easement Plan as the "Condominium Land" (the "Condominium Land"), on which Condominium Land Owner intends to develop a 64-unit townhouse condominium complex containing a total of 256 bedrooms (the "Condo Project"); and

WHEREAS, Treatment Plant Land Owner is the owner of a certain parcel of land consisting of approximately 7.8 acres of land in Westford, Massachusetts, as more particularly described on **Exhibit E** attached hereto and incorporated herein by reference and shown on the Easement Plan as the "Treatment Plant Land" ("**Treatment Plant Land**"), on which Treatment Plant Land Owner will construct a sewer treatment plant for the benefit of the Owners and the successors and assigns of all of the foregoing, subject to the terms and conditions contained herein; and

WHEREAS, the Owners desire to grant to each other Owners certain easements appurtenant to and for the benefit of the RRT Land, the Treatment Plant Land, the Condominium Land and the Apartment Land, as set forth herein, and each Owner desires to accept such easements for the benefit of its land and the obligations related thereto, all in accordance with, and subject to the terms hereof; and

WHEREAS, Apartment Land Owner hereby agrees to construct the Common Access Ways, the Common Utilities, the Common Signage, the Dumpster Area and the Offsite Improvements (as each term is hereinafter defined), subject to reimbursement by the other Owners for portions of the cost of construction of the same, all in accordance with, and subject to the terms hereof; and

WHEREAS, the Owners wish to establish arrangements for the repair and maintenance of the Common Access Ways, the Common Utilities, the Dumpster Area and the Common Signage and the sharing of costs associated therewith, and the construction, operation, maintenance and sharing of certain costs of the Treatment Plant; and

WHEREAS, the Owners are willing to join in this Agreement for the purposes hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual grant of easements and the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** As used in this Agreement, the following definitions shall apply:
 - (a) "**Approvals**" shall mean all permits, licenses, variances, easements and approvals required in order to construct the Site Work Improvements including, without limitation, that certain Comprehensive Permit Decision issued by the Town of Acton recorded in the Middlesex County Registry of Deeds in Book ___, Page ___ (the "Comprehensive Permit").
 - (b) "**Common Access Ways**" shall mean collectively, Laurel Hill Drive, the Secondary Access Road, the Emergency Access Road and the Common Driveway to Treatment Plant, all as shown on the Easement Plan.

- (c) **"Common Driveway to Treatment Plant"** shall mean the driveway to be constructed from the intersection of Emergency Access Road B (as shown on the Plan) at the upgraded Durkee Lane through portions of the RRT Land and the Treatment Plant Land providing access and utilities to the Treatment Plant and the RRT Project, shown as the "Common Driveway to Treatment Plant" on the Easement Plan.
- (d) **"Common Maintenance And Repair Fees"** shall mean the cost of snow and trash removal, landscaping, roadway, utility, lighting, insurance (if called for under Section 8(d) below), signage and drainage maintenance and repair, replacement and operational costs of the Common Access Ways and Common Utilities, the Common Signage and a management fee payable to Easement Manager in the amount of five percent (5%) of the Common Maintenance and Repair Fees and shall in any event include 30% of the annual operational and maintenance costs of Nagog Park Road, as billed to Easement Manager pursuant to the terms and provisions of the Declaration of Covenants, Restrictions and Easements recorded in the Middlesex County Registry of Deeds in Book 43707, Page 413 (the **"Nagog Costs"**). Common Maintenance And Repair Fees shall not include the following: (i) the cost of any additions or expansions for improvements within the Easement Areas which have not been approved by at least the Apartment Land Owner and the Condominium Land Owner in writing; (ii) any reserves for future expenditures not yet incurred; (iii) costs incurred by the Easement Manager for repair or restoration to the extent that the Easement Manager has received payment therefor from insurance, insurance deductible or condemnation proceeds or under a warranty; (iv) expenses in connection with services or benefits which are the exclusive benefit of one of the Owners and as to which such Owner bears sole responsibility hereunder; (v) costs incurred by the Easement Manager due to the gross negligence or willful misconduct of the Easement Manager or its agents, contractors, licensees and employees, (vi) advertising and promotional expenditures in connection with the facilities on the Apartment Land and costs for the installation of signs except for the Common Signage; (vii) any charges for depreciation of improvements; and (viii) any amount which would cause a double payment by any Owner by reason of the provisions of this Agreement setting forth the Owners' obligation to reimburse the Easement Manager for costs and expenses.
- (e) **"Common Signage"** shall mean the common directional signage for the Complex as more particularly specified in the Approvals and identified on the Signage Plan attached hereto as **Exhibit F** and made a part hereof (**"Signage Plan"**) as "Common Signage."
- (f) **"Common Utilities"** shall mean all common utility and drainage structures located on any parcel and serving more than one Owner's parcel and shall include all necessary detention ponds, drainage systems, end-

walls, catch basins, manholes, transformers, gas lines, electric lines, cable and telephone lines, sewer pump stations and sewer lines, pressure booster stations and water lines, and other necessary fixtures, apparatus and appurtenances of the same and any replacements of any of the foregoing. The locations of the Common Utilities shown on the Easement Plan are collectively referred to as the **"Common Utilities Areas."**

- (g) **"Common Signage Areas"** shall have the meaning set forth in Section 3.03(a) hereof.
- (h) **"Complex"** shall mean, collectively, the Treatment Plant Land, the Condominium Land and the Apartment Land.
- (i) **"Condominium Signage Areas"** shall have the meaning set forth in Section 3.03(b).
- (j) **"Default Rate"** shall mean the prime rate published in The Wall Street Journal (or in the event the prime rate is no longer published, a comparable measure) plus four percent (4%) per annum.
- (k) **"Dumpster Area"** shall mean the dumpster and recycling area shown on the Easement Plan as "Dumpster Area", located on the Condominium Land.
- (l) **"Easement Areas"** shall mean, collectively, the Dumpster Area, the Signage Areas, the areas shown on the Easement Plan as "Common Access Ways" and the Common Utilities Areas.
- (m) **"Emergency Access Road"** shall mean collectively, (i) the new gated emergency access road to be constructed over the L-Shaped parcel between Nonset Path and Nagog Park Road providing access to the Complex from Nonset Path and shown as "Emergency Access Road A" on the Easement Plan; and (ii) the new gated emergency access road to be constructed over the Apartment Land and certain land of abutters to the Complex to Durkee Lane and shown as "Emergency Access Road B" on the Easement Plan.
- (n) **"Law"** shall mean any federal, state or local, constitution, statute code, ordinance, regulation, judicial or administrative decision or other rule of law.
- (o) **"Legal Requirement"** or **"Legal Requirements"** shall mean, as the case may be, any one or more of all present and future laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency (but excluding those which

by their terms are not applicable to and do not impose any obligation on any Owner or the Complex) and all covenants, restrictions and conditions now or hereafter of record which may be applicable to any Owner of any project in the Complex, or necessary for the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Complex, including, without limitation, the Approvals.

- (p) **“Offsite Improvements”** shall mean collectively, construction of: (i) the waterline extension via the Town of Littleton, (ii) the upgrade and rehabilitation of Durkee Lane and Westford Lane, (iii) traffic improvements at the Nagog Office Park entrance to Nagog Park, (iv) construction of the portions of the Emergency Access Road and the Secondary Access Road which are not located within the Complex, (v) installation of Common Signage and Condominium Signage at the Nagog Office Park entrance to Nagog Park; and [(vi) any other offsite improvements required as part of the Approvals, all to be constructed in accordance with the Approvals].
- (q) **“Secondary Access Road”** shall mean the new road to be built off the upgraded Westford Lane providing secondary access to and through the Apartment Land, shown as the “Secondary Access Road” on the Easement Plan.
- (r) **“Signage Areas”** shall mean, collectively, the Common Signage Areas and the Condominium Signage Areas.
- (s) **“Site Work Improvements”** shall mean collectively, construction of (i) the Common Access Ways, (ii) the Common Utilities, (iii) the Common Signage, (iv) the Easement Areas (excluding the Condominium Signage), and (v) the Offsite Improvements; all to be constructed in accordance with the Approvals. Site Work Improvements shall not include construction required to connect the RRT Land to any portion of the Common Utilities.
- (t) **“Treatment Plant”** shall mean the sewer treatment plant to be constructed on the Treatment Plant Land by Apartment Land Owner in accordance with Groundwater Discharge Permit No. _____ dated _____, issued by the Commonwealth of Massachusetts Department of Environmental Protection (“DEP”), as amended, modified, supplemented or replaced from time to time (the “Treatment Plant Permit”).
- (u) **“Treatment Plant Initial Costs”** shall mean all costs incurred by Apartment Land Owner to create the Treatment Plant Land Owner legal entity and all costs to construct the Treatment Plant and the costs attributable to the Treatment including without limitation, the costs to

construct the Common Driveway to the Treatment Plant and construction of utilities servicing the Treatment Plant.

- (v) **“Treatment Plant Operating Costs”** shall mean the annual costs and expenses of any nature incurred by Treatment Plant Land Owner to operate, maintain, repair and make replacements to the Treatment Plant, including, without limitation, the cost of snow removal and maintenance and repair of the Common Driveway to Treatment Plant, Durkee Lane and Westford Road.

2. Covenants Of Apartment Land Owner To Build Site Work Improvements; Reimbursement

A. Apartment Land Owner, in conjunction with the construction of the Apartment Project and subject to reimbursement by the Condominium Land Owner, shall construct the Site Work Improvements. The Owner of the RRT Land shall have no obligation to reimburse the Apartment Land Owner for the cost of constructing the Site Work Improvements, except to the extent such costs relate to Treatment Plant Initial Costs. All Site Work Improvements shall be performed in compliance with the Approvals and all other Legal Requirements and otherwise in a good and workmanlike manner.

B. At the request of the Owner of the RRT Land, and subject to reimbursement by the Owner of the RRT Land to the Apartment Land Owner for all costs and expenses incurred in connection therewith, the Apartment Land Owner will construct stubs (but no more than four (4) stubs) to allow the proposed house lots comprising the RRT Land to connect to the water line serving the Complex/Treatment Plant and, subject to the terms and conditions of Section 5 hereof, to connect to the sewer lines servicing the Treatment Plant.

3. Grants of Reciprocal Easements by Owners.

3.01 Access Easements. The Owners of the Condominium Land, the Treatment Plant Land and the RRT Land hereby grant and convey to the Owner of the Apartment land a non-exclusive, perpetual easement and right to install, maintain, repair and replace the Common Access Ways, subject to the terms hereof. From and after completion of the initial construction of the Common Access Ways by Apartment Owner, any relocation thereof which occurs shall be subject to the approval of the granting Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

The Owners of the Apartment Land, the Condominium Land and the Treatment Plant Land hereby grant and convey, each to the other, for the benefit of the Apartment Land and Condominium Land, as applicable, a non-exclusive, perpetual easement and right to use all of the following: (i) the Common Access Ways, and (ii) the Dumpster Area and roadways on the Condominium Land leading to the Dumpster Area, for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians. From and

after completion of the initial construction of the Dumpster Area and roadways leading thereto, any relocation thereof which occurs shall be subject to the approval of the grantee Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

The Owners of the RRT Land and the Treatment Plant Land hereby grant and convey, each to the other, for the benefit of the RRT Land and the Treatment Plant Land, as applicable, a non-exclusive, perpetual easement and right to use the Common Driveway to Treatment Plant Land for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians. From and after completion of the initial construction of the Common Driveway to the Treatment Plant Land, the Treatment Plant Land Owner may relocate the Common Driveway to Treatment Plant Land subject to the approval of the RRT Land Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

The easements granted hereby and granted in Section 3.01 shall be for the benefit of, but not restricted solely to, the Owner of the Apartment Land, the Condominium Land, the Treatment Plant Land and, as applicable, the RRT Land and each such Owner may grant the benefit of such easement to the tenants and other occupants of the land owned by the same for the duration of such occupancy, and to the employees, agents and invitees thereof; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Complex or the RRT Land.

3.02 Utility Easements. The Owners hereby grant and convey, each to the other, for the benefit of the Apartment Land, the Condominium Land, the Treatment Plant Land and the RRT Land, as applicable, a non-exclusive, perpetual easement in, to, over, under and across the Common Utilities located on the granting Owner's parcel for the purpose of installation, operation, maintenance, repair, replacements, removal and relocation of detention ponds, drainage systems, end-walls, catch basins, manholes, transformers, gas lines, electric lines, cable and telephone lines, sewer pump stations and sewer lines, pressure booster stations and water lines and other underground utility lines to serve the facilities located on the Apartment Land, the Condominium Land, the RRT Land and the Treatment Plant Land, provided, however, that the RRT Land shall only have the benefit of connections to the water line (set forth in Section 3.01) and the Treatment Plant, subject to the conditions set forth in Section 5(a) hereof. Nothing set forth herein shall prevent an Owner from contracting separately with any public utility for utility service.

From and after completion of the initial construction of the Common Utilities by Apartment Owner, any relocation thereof which occurs shall be subject to the approval of the granting Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

Upon the reasonable request of the Owner of the RRT Land, each of the Owners of the Apartment Land, the Condominium Land, the RRT Land and the Treatment Plant

Land will agree to execute a separate easement to allow the owners of the house lots directly abutting Durkee Lane and shown on the Easement Plan as the "Abutting House Lots" to connect to the water line comprising a portion of the Common Utilities provided (i) the Abutting House Lot is required to connect to the water line as a result of the construction of the Treatment Plant; (ii) any such connection is performed by the Easement Manager or by a party and in accordance with plans and specifications each as approved by the Easement Manager; and (iii) at the time of any such proposed connection, there exists available capacity and pressure in the lines beyond that which is necessary to serve the Apartments Project, the Condo Project and the RRT Land. Notwithstanding the foregoing, in the event that a request by the Owner of the RRT Land is not made within five (5) years from the date of commencement of operation of the Treatment Plant, the obligations of the other Owners pursuant to this paragraph shall automatically terminate.

3.03 Sign Easements.

(a) Common Signage. The Owners hereby grant and convey, each to the other, for the benefit of the Apartment Land and the Condominium Land an easement in, to, over, under and across the Common Signage Areas for the purpose of installation, operation, maintenance, repair, replacements, removal and relocation of the Common Signage. The Common Signage shall be installed, maintained, repaired, replaced, removed and/or relocated by the Easement Manager with the costs thereof being part of the Common Maintenance and Repair Fees.

(b) Condominium Signage. Apartment Land Owner hereby grants to the Condominium Land Owner and its agents, servants, employees, contractors, invitees, occupants, residents and guests, as appurtenant to the Condominium Land and burdening the Apartment Land, in perpetuity, the following rights and easements:

The right and easement in common with Apartment Land Owner and others entitled thereto to use, repair, maintain, service, remove and replace, subject to the consent of Apartment Land Owner as set forth herein, from time to time signage relating to the Condominium Land at the following two locations, as each is identified on the Easement Plan as a "Condominium Signage Area" and referred to herein collectively as the "Condominium Signage Areas": (x) on the Apartment Land at the corner of Nagog Park Road and Laurel Hill Drive and (y) off-site at the corner of Nagog Park Road and Route 2A/119 as permitted pursuant to the Nagog Park Easement, together with reasonable access over, under, upon, through and across the Apartment Land to install, use, repair, maintain, service, remove, replace and operate a separate utility improvement in order to provide such signage with electrical power to illuminate the same. Any signage placed by Condominium Land Owner in the Condominium Signage Areas shall be subject to Apartment Land Owner's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Condominium Land Owner shall pay all costs and expenses with respect to the construction, maintenance and operation of the Condominium Signage and the improvements thereon. To the extent the Condominium Signage requires electrical power, Apartment Land Owner shall furnish such power,

subject to circumstances beyond Apartment Land Owner's reasonable control, and shall assess a reasonable charge for such electrical power so used or install an electricity meter and thereby measure Condominium Land Owner's electricity consumption. In the latter event, Condominium Land Owner shall pay the cost of the meter and the cost of installation therefor and shall keep such meter and installation equipment in good order and repair. Condominium Land Owner further agrees to pay for electricity consumed, as shown on such meter as and when bills are rendered, and in the event of non-payment, Apartment Land Owner may exercise the rights and remedies set forth in Section 7 below.

3.04 Limited Easement for Town of Acton. Reference is made to the Comprehensive Permit Decision of the Town of Acton recorded with the Middlesex County Registry of Deeds in Book ___, Page ___ and each of the Owners hereby grant to the Town of Acton and its employees, agents, boards, commissions and consultants the rights specified therein in Section XI.F.8 and XI.F.9.

4. **Covenant Of Treatment Plant Land Owner to Build Treatment Plant; Reimbursement**

(a) Treatment Plant Land Owner, subject to reimbursement by the Owners as set forth herein, shall construct the Treatment Plant. Construction of the Treatment Plant shall be performed in compliance with the Approvals and all other Legal Requirements and otherwise in a good and workmanlike manner.

(b) Within thirty (30) days of completion of construction of the Treatment Plant, the Owners shall reimburse Treatment Plant Land Owner for their "Percentage Share" of the Treatment Plant Initial Costs. For purposes hereof, the Percentage Share of each Owner shall be as follows: (i) with respect to the Apartments Owner, 79.78 %; (ii) with respect to the Condominium Owner, 17.98%; and (iii) with respect to the RRT Land Owner, 2.25%. With respect to the RRT Land Owner percentage, the 2.25% shall be allocated to each lot comprising the RRT Land in an amount equal to 0.562%.

5. **Grant of Easements and Rights Relating to Treatment Plant Appurtenant to the RRT Land, the Condominium Land and the Apartment Land and Burdening the Treatment Plant Land; Reimbursement.**

(a) Treatment Plant Land Owner hereby grants to Condominium Land Owner, Apartment Land Owner and RRT (subject to the terms and conditions hereof), and their respective agents, servants, employees, contractors, invitees, occupants, residents and guests, as appurtenant to the Condominium Land and the Apartment Land, and burdening the Treatment Plant Land, in perpetuity, the rights and easement to connect and thereafter discharge domestic sewage from the Condominium Land, Apartment Land and RRT Land, as applicable, to the Treatment Plant. The ability of RRT to exercise the foregoing rights and easement with respect to the connection of the RRT Land to the Treatment Plant shall be subject to the following conditions: (i) there is no adverse effect on the governmental approvals for the Treatment Plant obtained by the Treatment Plant Land

Owner as a result of any proposed connection of all or any portion of the RRT Land and (ii) the Owner of the RRT Land pays the full cost and expense of any capital improvements, maintenance or utility costs required as a result of the connection of the RRT Land or any portion thereof to the Treatment Plant; and (iii) the Owner of the RRT Land pays its Percentage Share of the Treatment Plant Operating Costs; and (iv) any such connection or connections are performed by the Easement Manager, subject to reimbursement, or by a party and in accordance with plans and specifications each as approved by the Easement Manager. Notwithstanding the foregoing, in the event that the RRT Land does not connect to the Treatment Plant, the RRT Land Owner shall in any event be responsible for 2.25% of those portions of the Treatment Plant Operating Costs relating to the repair, maintenance and snow removal of the Common Driveway to Treatment Plant, Durkee Lane and Westford Road.

The Treatment Plant Land Owner will reasonably consider a request by the owners of the Abutting House Lots to connect and thereafter discharge domestic sewage from the Abutting House Lots and to grant an easement to such owners therefor provided (i) at the time of any such proposed connection, there exists available capacity in the Treatment Plant beyond that which is necessary to serve the Apartments Project and the Condo Project and the RRT Land; and (ii) the owner of an Abutting House Lot requesting such connection obtains at its sole cost and expense any approvals required by any governmental agency required to connect the Abutting House Lot to the Treatment Plant and provides copies of the same to the Treatment Plant Land Owner, and (iii) there is no adverse effect on the governmental approvals for the Treatment Plant obtained by Treatment Plant Land Owner as a result of any permits required for the connection of the Abutting House Lots; and (iv) the costs and expenses of an Abutting House Lot connection are borne exclusively by the owner of the Abutting House Lot so connecting; and (v) any such connection is performed by the Easement Manager, subject to reimbursement, or by a party and in accordance with plans and specifications each as approved by the Easement Manager; and (vi) the owner of the Abutting House Lot pays a percentage share of the Treatment Plant Operating Costs based on the number of bedrooms approved for the Abutting House Lot relative to the number of bedrooms approved by the other property served by the Treatment Plant. Notwithstanding the foregoing, in the event that an Abutting House Lot does not make a request to connect to the Treatment Plant and so connect to the Treatment Plant within five (5) years from the date of commencement of operation of the Treatment Plant, any right of such Abutting House Lot to have a request to connect to the Treatment Plant considered shall automatically terminate and be null and void.

(b) Condominium Land Owner, Apartment Land Owner and RRT and their successors and assigns hereby agree to abide by all rules and regulations and charges of the Towns of Acton and Westford and the Commonwealth of Massachusetts and otherwise comply with all Legal Requirements in the exercise of their easement rights hereunder.

(c) The Owners shall reimburse Treatment Plant Land Owner on a monthly basis for the applicable Owner's Percentage Share of all Treatment Plant Operating Costs. All

payments shall be made within thirty (30) days of receipt of a written invoice from Treatment Plant Land Owner setting forth all Treatment Plant Operating Costs. In the event that there is a change in the use or improvements on any parcel that results in a material change in the relative usage of the Treatment Plant, the Owner of the Apartment Land or the Condominium Land may initiate a "Percentage Share Recalculation" (hereinafter defined").

(d) A Percentage Share Recalculation shall commence when either the Owner of the Apartment Land or the Owner of the Condominium Land shall provide the other Owners with a notice electing to commence a Percentage Share Recalculation. The Owners which shares are subject to change shall engage in good faith discussion for a period of 60 days in order to reach agreement that a recalculation of the Treatment Plant Operating Costs are warranted as an equitable matter and on the terms of the recalculation. In the event the Owners are unable to reach such agreement within said 60 day period, any Owner may cause the matter to be determined by an expedited arbitration by a panel of three (3) arbitrators in accordance with the commercial arbitration rules of the American Arbitration Association, except that each arbitrator shall have at least ten (10) years experience as a residential property manager in the greater Boston area. Each party shall be entitled to designate one arbitrator and the two arbitrators so selected shall together select a third arbitrator. If the first two arbitrators cannot agree on a third arbitrator within ten days of their having been selected, then the third arbitrator shall be designated by the American Arbitration Association, subject to the foregoing requirements as to qualifications and the parties shall submit the matter to the arbitration in accordance with the rules of the American Arbitration Association, the result of such arbitration to be binding upon the parties and enforceable in any court of competent jurisdiction. The Owners acknowledge and agree that no Owner shall have the right to seek a Percentage Share Recalculation if: (a) there is a reduction in intensity of use of any parcel of Land and no material change in the nature of such use or the size or nature of the improvements located thereon (for example, a cessation of activities as a result of adverse economic conditions) or (b) in connection with the initial development of the Apartment Land, Apartment Land Owner decides to build fewer improvements than the number of Apartments permitted by the local zoning approvals obtained therefor, or (c) in connection with the initial development of the Condominium Land, Condominium Land Owner decides to build fewer improvements than the number of Condominiums permitted by the local zoning approvals obtained therefor, or (d) in connection with the RRT Land, fewer than 4 homes of 4 bedrooms each are built thereon. All costs associated with any Percentage Share Recalculation shall be a Treatment Plant Operating Expense. Notwithstanding the foregoing, the RRT Land Owner shall have no right to seek a Percentage Share Recalculation, unless undertaken at the sole cost and expense of the RRT Land Owner.

6. Administration of Agreement and Functions of Easement Manager.

(a) Appointment. The parties hereby appoint the Owner of the Apartment Land as "Easement Manager" for the Common Access Ways, the Common Utilities, the Common Signage and the Dumpster Area to be used by all Owners.

(b) Maintenance. Each Owner shall maintain its parcel in a first class, commercial grade manner subject only to circumstances beyond the Owner's reasonable control. The Easement Manager shall maintain, repair and replace (as necessary) the Common Access Ways (including snow removal and landscaping), the Common Utilities, the Common Signage Areas and the Dumpster Area in a first class, commercial grade manner subject only to circumstances beyond the Easement Manager's reasonable control, provided, however, that Easement Manager's (or Treatment Plant Land Owner's) only obligation with respect to the Common Driveway to Treatment Plant, Durkee Lane and Westford Road is to maintain, repair and remove snow from such access ways as may be necessary, as determined by the Treatment Plant Owner, for operation of the Treatment Plant. Each Owner shall be liable for its "Common Maintenance and Repair Fees Percentage Share" as defined below of such repair or maintenance.

(c) Payment and Collection of Maintenance and Repair Fees.

(i) Each of the Owners of the Apartment Land and the Condominium Land shall be responsible for its Common Maintenance and Repair Fees Percentage Share of Common Maintenance and Repair Fees, which shall be ____% for the Apartment Land Owner and ____% for the Condominium Land Owner, provided, however, that with respect to the costs of repair, maintenance and snow removal for the Common Driveway to Treatment Plant, Durkee Lane and Westford Road, each of the Apartment Land Owner, the Condominium Land Owner and the RRT Land Owner shall pay its Percentage Share (as defined in Section 5(c) above) to the Easement Manager or the Treatment Plant Land Owner (whichever entity elects to perform such maintenance, repair or snow removal). In the event of a change in the use or improvements on any parcel that results in a material change in the relative usage of the Common Access Ways and/or Common Utilities, the Condominium Land Owner or the Apartment Land Owner may initiate a Common Maintenance and Repair Fees Recalculation (as hereinafter defined).

(ii) A "**Common Maintenance and Repair Fees Recalculation**" shall commence when either the Owner of the Apartment Land or the Owner of the Condominium Land shall provide the other Owner with a notice electing to commence a Common Maintenance and Repair Fees Recalculation. The Owners shall engage in good faith discussion for a period of 60 days in order to reach agreement that a recalculation of the maintenance and repair fees are warranted as an equitable matter and on the terms of the recalculation. In the event the Owners are unable to reach such agreement within said 60 day period, any Owner may cause the matter to be determined by an expedited arbitration by a panel of three (3) arbitrators in accordance with the commercial arbitration rules of the American Arbitration Association, except that each arbitrator shall have at least ten (10) years experience as a residential property manager in the greater Boston area. Each party shall be entitled to designate one arbitrator and the two arbitrators so selected shall together select a third arbitrator. If the first two arbitrators cannot agree on a third arbitrator within ten days of their having been selected, then the third arbitrator shall be designated by the American Arbitration Association, subject to

the foregoing requirements as to qualifications and the parties shall submit the matter to the arbitration in accordance with the rules of the American Arbitration Association, the result of such arbitration to be binding upon the parties and enforceable in any court of competent jurisdiction. The Owners acknowledge and agree that no Owner shall have the right to seek a Common Maintenance and Repair Fees Recalculation if: (a) there is a reduction in intensity of use of any parcel of Land and no material change in the nature of such use or the size or nature of the improvements located thereon (for example, a cessation of activities as a result of adverse economic conditions) or (b) in connection with the initial development of the Apartment Land, Apartment Land Owner decides to build fewer improvements than the number of Apartments permitted by the local zoning approvals obtained therefor, or (c) in connection with the initial development of the Condominium Land, Condominium Land Owner decides to build fewer improvements than the number of Condominiums permitted by the local zoning approvals obtained therefor. All costs associated with any Common Maintenance and Repair Fee Recalculation shall be a Common Maintenance and Repair Fee. Notwithstanding the foregoing, there shall be no right of the Owner of the RRT Land to seek a Common Maintenance and Repair Fee Recalculation.

(iii) Until all of the Apartments and all of the Condominiums have been constructed and certificates of occupancy issued therefor, Easement Manager shall calculate each Owner's percentage share of Common Maintenance and Repair Fees and bill each Owner on a monthly basis. Thereafter, Easement Manager shall prepare an annual statement of estimated Common Maintenance And Repair Fees at the beginning of each calendar year, which statement shall include reasonable detail (including line items) and the Owners shall be billed quarterly (or annually, in the Easement Manger's discretion) according to such statement. A final bill shall be issued within 60 days after the end of each calendar year and shall be accompanied by documentation providing reasonable detail of actual costs incurred. Any overpayments shall be applied to the following year's Common Maintenance And Repair Fees; any underpayments shall be paid promptly by the Owners to the Easement Manager. Such expense budget may be modified by the Easement Manager during the year for any unusual expenses exceeding the budget.

(iv) Each Owner, at its sole cost and expense, shall have the right to audit the applicable records of the Easement Manager to confirm that the Common Maintenance and Repair Fees billed to such Owner are proper and conform to the provisions of this Agreement. Such right shall be exercisable by the Owners within one (1) year of the Owners' receipt of the Easement Manager's annual statement of such charges. The Easement Manager shall cooperate with the Owners in providing the Owners reasonable on-site access to the Easement Manager's books and records during normal business hours upon reasonable advance written notice for the purpose of conducting such audit. If the audit discloses any overpayment on the part of an Owner, then such Owner shall be entitled to a credit on the next succeeding installments of Common Maintenance and Repair Fees.

(v) Every instrument executed by the person who, according to the public records, appears to be the Easement Manager hereunder shall be conclusive in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof this instrument was in full force and effect and that the Easement Manager was duly authorized to execute and deliver the same. A certificate signed and acknowledged by the Easement Manager for the time being, certifying who is the Easement Manager for the time being, to a change in the identity of the Easement Manager, or to any other fact affecting this instrument, shall be conclusive evidence thereof, provided such certificate is recorded with the applicable Registry of Deeds/Registry District.

(vi) At its discretion, the Easement Manager may bill directly any Owner for expenses that the Easement Manager reasonably determines in good faith are associated with the willful acts or gross negligence of such Owner, its agents or invitees or are associated with the repair and restoration of the Common Access Ways or the Common Utilities required as a result of wear or damage caused by an Owner of the Common Access Ways or the Common Utilities for trucks or other heavy equipment or otherwise. In the event such expenses remain unpaid within thirty (30) days after receiving a bill therefor, the provisions of subsection 5(d)(v) above shall apply to the payment and collection of such expenses.

7. Maintenance and Repair Obligations.

All of the easements herein granted by this instrument are expressly granted with the obligation on the part of each Owner exercising such rights and easements or any other right granted herein to comply with all Legal Requirements now or hereafter in effect pertaining to said Easement Area.

8. Default.

(a) If an Owner (the "defaulting party") fails to pay its obligations hereunder within thirty (30) days after receiving a bill therefor, the Easement Manager or Treatment Plant Land Owner, as applicable, may charge interest on such costs at the Default Rate. In addition, the Easement Manager or Treatment Plant Land Owner, as applicable shall be permitted to record with the appropriate public land records a notice of lien of such obligation plus interest accruing thereon pursuant to the provisions of M.G.L. c 254, which lien shall be subordinate to any institutional first mortgage on the fee interest or any leasehold estate or any portion thereof or any combination thereof and to enforce and foreclose such lien in a court of competent jurisdiction; and in connection with the recording of such notice of lien, such Owner hereby appoints the Easement Manager or Treatment Plant Land Owner, as applicable, such appointment being coupled with an interest and being unconditional and irrevocable, as its trust and lawful attorney with full power of substitution and with the power for the other, or in the name and capacity of the appointing party, to execute such notice of lien in the name of and behalf of the other, so as to permit such notice of lien to be so recorded and filed.

(b) If any Owner shall default in the performance of any of its obligations contained in this Agreement (the "defaulting Owner") and shall permit such default to continue for a period of thirty (30) days after receipt of written notice of such default from the Apartment Land Owner or the Condominium Land Owner or, if such default cannot be cured within such thirty (30) days, such longer period not to exceed sixty (60) days so long as the cure is promptly commenced and diligently prosecuted to completion, the Condominium Owner or Apartment Land Owner, as applicable (the "curing Owner") may, at its option, without waiving any claim for damages for breach of agreement, cure such default for the account of the defaulting Owner and any amount paid or any contractual liability incurred by said curing Owner in so doing shall be deemed paid or incurred for the account of the defaulting Owner, and the defaulting Owner agrees to reimburse the curing Owner therefore and save the curing Owner harmless therefrom; provided, however, that the curing Owner may cure such default as aforesaid prior to the expiration of said waiting period, but after reasonable notice to the defaulting Owner if the defaulting Owner's failure to perform any repair or maintenance causes an emergency, or performance of such repair or maintenance is necessary to prevent substantial property loss or damage to the curing Owner or any of the Owners or lawful occupants of the Condominium Land or the Apartment Land. In the event the curing Owner performs any of the obligations of the defaulting Owner who fails to perform as aforesaid, the curing Owner, in addition to any other remedies it may have, shall be reimbursed by the defaulting Owner within thirty (30) days of presentation of a statement therefore accompanied by documentation providing reasonable detail of actual costs incurred, failing which, in addition to any other remedies it may have, curing Owner shall be permitted to record with said Deeds and file with said Registry District a notice of lien the amount of such reimbursement together with interest accruing thereon at the Default Rate documenting such obligation pursuant to the provisions of M.G.L. c. 254, which lien shall be subordinate to any institutional first mortgage on the fee interest or any leasehold interest in the Land or any portion thereof or any combination thereof and to enforce and foreclose such lien in a court of competent jurisdiction; and in connection with the recording of such notice of lien, the defaulting Owner hereby appoints such curing Owner, such appointment being coupled with an interest and being unconditional and irrevocable, as its true and lawful attorney with full power of substitution and with the power for the other, or in the name and capacity of the appointing party, to execute such notice of lien in the name of and on behalf of the other, so as to permit such notice of lien to be so recorded /filed.

(b) An Owner shall not be deemed to have failed to perform its obligations hereunder for so long as such delay is prevented due to strikes, lockouts, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, seasonal conditions, unavoidable casualty or other causes beyond the control of the Owner provided that lack of funds shall not be deemed a cause beyond the control of the Owner.

(c) An Owner shall have the right to prosecute any proceedings at law or in equity against any defaulting Owner who violates any of the provisions of this Agreement, and to recover damages for any such violation or default. All of the remedies

permitted or available to an Owner under this Agreement or at law or in equity shall be cumulative, and the election of any such right or remedy shall not constitute a waiver with respect to any other permitted or available right or remedy.

(d) Notwithstanding any provision hereof to the contrary, in addition to an Owner giving a defaulting Owner such notice of default, such Owner shall give written notice of such default to the holder of any first mortgage on the fee estate or leasehold estate interests in said land of the defaulting Owner, provided that such holder has identified its status as a holder to the Owners by a notice given in accordance with the notice provisions of this Agreement. Any Owner giving or receiving a notice of default shall promptly deliver a copy of the same to such holders. Such holder shall have the right, but not the obligation, to cure any such default and shall have such period of time as may be required to cure such default with reasonable due diligence, it being understood and agreed that any such first mortgage holder, within thirty (30) days after its receipt of such notice of default to the Owner who gave it such notice of default and thereafter diligently and continuously pursues such cure. Without limiting the right of such curing Owner to sue for damages in the event of such default, such curing Owner shall take no action to foreclose its lien herein created on account of such default until such first mortgage holder has been afforded its notice and opportunity to cure as aforesaid.

9. Indemnity and Insurance.

(a) Each Owner shall carry its own insurance in connection with the exercise of its rights hereunder and agrees to defend, indemnify, exonerate and hold harmless the other Owners and those claiming by, through or under them (including, without limitation, their respective mortgages and tenants), from and against any and all loss, liability, cost, damage and expense arising out of, or alleged to have arisen out of, any excavation, construction or other work or entry made on an Easement Area in connection herewith by such Owner, or any lessee, employee, agent or contractor of any of them acting under or pursuant to this instrument including, without limitation, injury (including death) to persons and damage to property.

(b) Before entering upon an Easement Area, the party making such entry or on whose behalf such entry is to be made shall furnish the affected Owner with a certificate of commercial general liability insurance in an amount not less than \$1,000,000 per individual and \$3,000,000 per occurrence (or such large amounts as may be carried by prudent property owners in similar situations), which may be under a blanket or umbrella policy or policies, so-called, bearing an endorsement naming the affected lot owner as an insured thereunder and specifically insuring the liability of such party under this paragraph, and thereafter shall keep such insurance coverage in full force and effect during the period of the work. Such certificate shall provide for 30 days advance notice to the affected Owner in the event of cancellation of coverage.

(c) With respect to the use of Common Access Ways and the Common Utilities, each Owner shall carry its own commercial general liability insurance in

connection therewith in an amount not less than \$1,000,000 per individual and \$3,000,000 per occurrence or such other amounts as may be carried by prudent property owners in similar situations.

(d) In lieu of the foregoing, the parties may agree to cooperate in arranging for the Easement Manager to carry liability insurance naming all Owners (and those claiming by, through or under them) as insured parties in amounts and form reasonable acceptable to the parties hereto, if and to the extent such insurance is available. The cost of such insurance shall be treated as a Common Maintenance And Repair Fee, except that the Owners' share of the cost thereof and the payment of any deductible thereunder shall be the subject to good faith discussions of the parties at the time such insurance is arranged. In the event the Owners are unable to agree to the allocation of such shares within 60 days following the commencement of such discussions, at the election of either Owner within 30 days following such 60-day period, the arbitration process set forth in subsection (i) above shall apply.

10. Notices.

All notices and other communications hereunder shall be in writing and shall be deemed duly given: (a) when deposited with the U.S. Postal Service and mailed by registered or certified mail, return receipt requested, postage and registration or certification charges prepaid and addressed as follows:

If to RRT:

with a copy to:

If to Treatment Plant Land Owner:

with a copy to:

If to Condominium Land Owner:

with a copy to:

If to Apartment Land Owner:

AvalonBay Communities, Inc.
2900 Eisenhower Avenue
Third Floor
Alexandria, VA 22314
Attn:
Tel.:
Fax:

with a copy to:

(b) when deposited with a reputable overnight delivery service for overnight delivery addressed to the same parties specified in subparagraph (a) above or (c) upon actual delivery when delivered by hand during usual business hours addressed to the same parties specified in subparagraph (a) above, except that either party may by written notice to the other designate another address which shall thereupon become the effective address of such party for the purposes of this paragraph.

11. Additional Documentation.

Each of the parties hereto shall execute such documents as may reasonably be required by any other party hereto for the purpose of further implementing, evidencing and confirming the rights, easements and agreements which are the subject hereof.

12. Easements Run With Land.

The rights, duties, easements and agreements herein contained shall be appurtenant to and benefit the Apartment Land, the RRT Land, the Treatment Plant Land, and the Condominium Land and shall burden the Apartment Land, the RRT Land, the Treatment Plant Land and the Condominium Land; and shall be binding on and inure to the benefit of RRT, the Treatment Plant Land Owner, the Condominium Land Owner and the Apartment Land Owner, and their respective successors and assigns; provided, however, that the provisions hereof shall be binding upon the parties hereto and their respective successors and assigns only with respect to breaches occurring during the period during which such party, or its successor or assign, owns an interest in the parcel(s) which is/are the subject hereof. In such event, the terms of this Agreement shall be deemed to continue to apply to the benefit of the subparcels of the applicable parcels or any or more of them, and to create the same rights, easements and obligations as between and among such subparcels as are created herein.

13. No Dedication to Public.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Apartment Land, the Condominium Land, the Treatment Plant Land or the RRT Land to the general public or for any public use or purposes whatsoever, it being the intention of the parties hereto that this Agreement is for the exclusive benefit of the

Owners and their successors, assigns, mortgages, tenants, customers and invitees and that nothing in this Agreement, express or implied, shall confer upon any person, other than the Owners and their successors, assigns, mortgagees, tenants, customers, and invitees any rights or remedies under or by reason of this Agreement.

14. Amendment or Modification.

This Agreement may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by the owner of the Condominium Land, the Owner of the Apartment Land and the Owner of the Treatment Plant Land. Amendments or modifications that directly affect the obligations or rights of the Owner of the RRT Land shall also require the execution and acknowledgement of the Owner of the RRT Land. Any modification or amendment shall be duly recorded with the applicable Registry of Deeds/Registry District.

15. Time.

Time is of the essence of this Agreement.

16. No Waiver.

The failure of any Owner to insist upon strict performance of any of the terms or conditions hereof shall not be deemed a waiver of any rights or remedies which that Owner may have hereunder, at law or in equity and shall be deemed a waiver of any subsequent breach or default in any of such terms or conditions. No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such owner and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

17. Negation of Partnership.

None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

18. Governing Law.

The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this Agreement.

19. Estoppel Certificates.

The Easement Manager and the Owners each agrees, from time to time, upon not less than thirty (30) days' prior written notice by any other party, to execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Agreement is unmodified and in full force and effect and that the certifying party has no defenses, offsets or counterclaims against its obligations hereunder, and that to the best of its knowledge, there are no uncured defaults of any other party under this Agreement (or if there have been any modifications, that the same is in full force and effect as modified, and stating the modifications and, if there are any defenses, offsets, unpaid charges, counterclaims or defaults, setting them forth in reasonable detail). Any such statement delivered pursuant to this Section 18 may be relied upon by any prospective purchaser, lessee, or mortgagee of all or any part of a lot (or leasehold therein) owned by the requesting party, or any prospective assignee or any mortgagee of any such lot, portion thereof or leasehold therein.

20. Limited Liability.

Except as herein otherwise expressly provided, the Owners shall be liable for any breach of such Owner's obligations hereunder occurring during such Owner's period of ownership thereof. In no event shall any partner, trustee, principal, officer, director, shareholder, employee or agent of or in any Owner or mortgagee have or incur any personal liability for any of the liabilities or obligations of any owner or mortgagee and no personal judgment shall be sought, levied or enforced against any such person individually, it being understood and agreed by the Owners that their recourse hereunder shall be limited to the interest of any Owner or mortgagee in the applicable parcels, as the case may be and the assets of such entity itself.

21. Captions.

The captions of this Agreement are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this Agreement, and they shall not affect the interpretation hereof.

22. Severability.

If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. Written Consent Required.

Whenever a consent or approval of an Owner is required hereunder, the consent of any mortgagee in connection with such parcel also shall be required. Whenever an Owner or a mortgagee is requested to consent to or approve of any matter with respect to which its consent or approval is required by this Agreement, such consent or approval shall be given in writing, and shall not be unreasonably withheld, conditioned or delayed.

24. Counterparts.

This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one and the same instrument.

25. Non-Exclusivity.

It is understood and agreed that the rights and easements granted hereby are non-exclusive and the Owners granting the rights and easements, and anyone claiming by, through or under said Owners and all other parties entitled to use the same shall have the right to use its parcel (including such portions designated as Easement Areas hereunder) for any purpose which does not unreasonably interfere with the easement holders' use and enjoyment of such land or said Easement Areas.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and delivered under seal as of the day and year above written.

RECREATIONAL REALTY TRUST, LLC

By: _____
Name:
Title:

CONDOMINIUM LAND OWNER:

By: _____
Name:
Title:

APARTMENT LAND OWNER:

By: _____
Name:
Title:

TREATMENT PLANT LAND OWNER:

By: _____
Name:
Title:

[Add notary acknowledgements]

- Exhibit A: Legal Description of RRT Land (Lots 6A, 7A, 7B and 7C)
Exhibit B: Easement Plan – showing all parcels, Common Access Ways, Common Utilities and Signage Areas
Exhibit C: Legal Description of Apartment Land (Lot 1, Lot 2, Lot 3, Parcel A, Treatment Plant Land, L-shaped Lot and Triangular Lot to NW of Durkee Lane)
Exhibit D: Legal Description of Condominium Land (Lot 5)
Exhibit E: Legal Description of Treatment Plant Land (Lot 4)
Exhibit F: Signage Plan

Woodlands at Laurel Hill,
Special Permit Application – Senior Residence:
☐ Draft Legal Documents- Regulatory Agreement

REGULATORY AGREEMENT

This Regulatory Agreement (this "Agreement") is made this ____ day of _____ 200_, by and between the Town of Acton, Massachusetts (the "Municipality" or "Monitoring Agent"), and _____, a Delaware limited liability company, having an address c/o OHC Development LLC, One Intercontinental Way, 3rd Floor, Peabody, Massachusetts 01960, and its successors and assigns ("Developer").

RECITALS

WHEREAS, the Developer intends to construct a 64 unit condominium development on a _____ acre site on _____ in Acton, Massachusetts, more specifically described in Exhibit A attached hereto and made a part hereof ("Project"); and

WHEREAS, the Developer has received a Senior Residence Special Permit ("Special Permit") from the Planning Board for Municipality under Section 9B of the Town of Acton Zoning By-Law, which Special Permit is recorded with Middlesex South District Registry of Deeds ("Registry") in Book _____, Page _____; and

WHEREAS, the Special Permit has specified that _____ condominium units will be affordable units ("Affordable Units"), which will be subject to this Regulatory Agreement to restrict the sale of the Affordable Units to individuals who are over fifty-five years of age and are moderate income first time homebuyers, or otherwise qualify under the Massachusetts Local Initiative Program ("LIP") Elderly Exception Program; and

WHEREAS, pursuant to the terms of this Regulatory Agreement, _____ of the Affordable Units will be sold to households earning no more than eighty (80%) percent of the Base Income Number (hereinafter defined), adjusted for household size, and _____ of the Affordable Units will be sold to households earning no more than seventy (70%) percent of the Base Income Number; and

WHEREAS, pursuant to the requirements of the Special Permit and this Regulatory Agreement, the Developer has agreed to retain the Town of Acton ("Monitoring Agent"), to perform monitoring and enforcement services regarding compliance of the Project with the Affordability Requirements set forth herein.

NOW, THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Municipality and the Developer hereby agree as follows:

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below:

Additional Windfall Amount shall have the meaning set forth in Section 7 hereof.

Affirmative Fair Marketing means outreach and other marketing efforts to minority households in a manner consistent with the affirmative fair marketing policies of the Project Administrator for homeownership projects and sufficient to satisfy the requirements of applicable fair housing laws and regulations, in accordance with a plan approved by the Project Administrator.

Affordable Housing Fund shall have the meaning set forth in Section 7 hereof.

Age Qualified Individual means a person 55 years of age or older.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms in the Property plus one.

Approved Capital Improvements means the documented commercially reasonable cost of capital improvements made to the Property due to normal wear and tear and needed modernizations; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and the original cost of such improvements may be discounted over time.

Area means the Primary Metropolitan Statistical Area which includes the Municipality.

Base Income Number means the most recently published Area median income number (MFI), as published by HUD.

Chief Elected Official means the Board of Selectmen of Acton.

Deed Rider means the deed rider in the form attached hereto as Exhibit C and fully incorporated herein by reference to be attached to each deed of each Affordable Unit as provided in Section 5 hereof.

Default Notice and the Project Administrator Default Notice shall have the meanings given such terms in Section 20 hereof.

80% Unit means a Unit to be sold to an Age Qualified Individual or household (where at least one household member is an Age Qualified Individual) who qualifies as a First-Time Homebuyer earning no more than eighty percent (80%) of the Base Income Number adjusted for household size for the Appropriate Size Household and owning assets not in excess of the limit set forth in the Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity ("Guidelines") issued by the Massachusetts Department of Housing and Community Development ("DHCD"), as amended from time to time.

Eligible Purchaser means an Age Qualified Individual who qualifies as a First-Time Homebuyer earning no more than eighty percent (80%) (as to the 80% Unit) and no more than seventy percent (70%) (as to the 70% Unit) of the Base Income Number adjusted for household size for the Appropriate Size Household and owning assets not in excess of the limit set forth in the Guidelines, as amended from time to time. If HUD discontinues publication of median income statistics, then the Monitoring Agent shall designate another measure of eligible income. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income and assets as the Monitoring Agent may require to justify designation as an Eligible Purchaser.

Eligible Purchaser Certificate shall have the meaning set forth in Section 5(a) of the Deed Rider.

First-Time Homebuyer means an individual or household, none of whom have had an ownership interest in a principal residence at any time during the three (3)-year period prior to the purchase date of the Property, except that (i) any individual who is a displaced homemaker (as defined by DHCD for purposes of its Local Initiative Program or any successor comprehensive permit program) may not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse, and (ii) any elderly household (where at least one household member is 55 or over) may not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that any household member had an ownership interest in a principal residence at any time during the three (3)-year period.

HUD means the United States Department of Housing and Urban Development.

Initial Sale Price means the price at which the Affordable Unit is first sold by the Developer to an Eligible Purchaser. The Initial Sale Price from the Developer to the first Eligible Purchaser as to the 80% Unit shall be no greater than the maximum price affordable to a buyer earning up to seventy percent (70%) of the Base Income Number adjusted for household size for the Appropriate Size Household (although an Eligible Purchaser may actually earn up to eighty percent (80%) of the Base Income Number), with a maximum debt to income ratio of thirty percent (30%). The Initial Sale Price from the Developer to the first Eligible Purchaser as to the 70% Unit shall be no greater than the maximum price affordable to a buyer earning up to sixty percent (60%) of the Base Income Number adjusted for household size for the Appropriate Size Household (although an Eligible Purchaser may actually earn up to seventy percent (70%) of the Base Income Number), with a maximum debt to income ratio of thirty percent (30%).

Marketing Documentation shall have the meaning set forth in Section 8 hereof.

Marketing Plan shall have the meaning set forth in Section 8 hereof.

Maximum Resale Price means the sum of (A) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (B) the Resale Fee and any necessary marketing expenses (including broker's fees, if any) as may have been approved by the Monitoring Agent, plus (C) Approved Capital Improvements, if any (the original cost of which may be discounted over time); provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a creditworthy Eligible Purchaser earning seventy percent (70%) of the Base Income Number for the Appropriate Size Household as to the 80% Unit and sixty percent (60%) of the Base Income Number for the Appropriate Size Household as to the 70% Unit could obtain mortgage financing (as determined by the Monitoring Agent using the standards of DHCD then in effect for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the Grantee unless the Grantee agrees to accept a lesser price.

Monitoring Agent means the Municipality as monitoring agent under the Monitoring Services Agreement or any successor monitoring agent selected in accordance with the provisions of Section 6 of the Monitoring Services Agreement.

Monitoring Services Agreement means the Monitoring Services Agreement of even date herewith among the Developer and the Municipality as Monitoring Agent in the form attached hereto as Exhibit D and incorporated herein by reference.

Resale Fee shall have the meaning set forth in the Deed Rider attached hereto as Exhibit C.

Resale Price Certificate means the certificate in recordable form issued by the Monitoring Agent and recorded with the first deed of each Affordable Unit from the Developer to the initial Eligible Purchaser, which certificate sets forth the Resale Price Multiplier to be applied on the resale of such Affordable Unit, according to the terms of the Deed Rider for such unit, for so long as the restrictions set forth in this Agreement continue. If on any resale the Maximum Resale Price includes Approved Capital Improvements, the Monitoring Agent shall issue a new Resale Price Certificate to be recorded with the deed for such resale, which certificate shall include a new Resale Price Multiplier to be applied on each subsequent resale of such Affordable Unit according to the terms of the Deed Rider for such unit, for so long as the restrictions set forth in this Agreement continue.

Resale Price Multiplier means, for each Affordable Unit, the number calculated by dividing the Initial Sale Price by the Base Income Number at the time of the initial sale from the Developer to an Eligible Purchaser, and which will be multiplied by the Base Income Number at the time of resale to determine (in part) the Maximum Resale Price. In the event that the purchase price paid for any Affordable Unit includes Approved Capital Improvements, the Resale Price Multiplier shall be recalculated by the Monitoring Agent by dividing the purchase price so paid (not including the Resale Fee) by the Base Income Number at the time of such purchase.

Example: Assume the Base Income Number at the time of the initial sale is \$80,800 and the Initial Sale Price is \$150,000. The Resale Price Multiplier would equal 1.86 ($150,000/80,800 = 1.86$). Then assume that at the time the initial purchaser sells the unit, the Base Income Number has increased to \$88,072 and Approved Capital Improvements (e.g., a new roof) equal \$5,000, the Maximum Resale Price (herein defined) would be calculated as follows: $\$88,072 \times 1.86 = \$163,814 + \text{the Resale Fee (herein defined)} + \$5,000$. If the subsequent purchaser sells the unit at a time when the Base Income Number is \$85,000, the Maximum Resale Price would be calculated as follows: (i) recalculated Resale Price Multiplier = 1.92 ($168,814/88,072 = 1.92$); (ii) $\$85,000 \times 1.92 = \$163,200 + \text{the Resale Fee} + \text{Approved Capital Improvements (if applicable)}$.

The initial Resale Price Multiplier for each Affordable Unit is set forth in Exhibit B attached hereto.

Resale Restrictions shall have the meaning set forth in Section 5(b) hereof.

70% Unit means a Unit to be sold to an Age Qualified Individual or household (where at least one household member is an Age Qualified Individual) who qualifies as a First-Time Homebuyer earning no more than seventy percent (70%) of the Base Income Number adjusted for household size for the Appropriate Size Household and owning assets not in excess of the limit set forth in the Guidelines, as amended from time to time.

Unit Purchaser shall have the meaning set forth in Section 5(a) hereof.

Windfall Amount shall have the meaning set forth in Section 5(c) hereof.

2. Construction Obligations. The Developer agrees that the Affordable Units shall be dispersed throughout the Project to insure a true mix of market rate and Affordable Units. The exterior of the Affordable Units shall be compatible with, and as much as possible indistinguishable from, market rate units in the Project. All internal design features of the Affordable Units shall be substantially the same as those of market rate units. The Developer designates _____ as the 80% Units and _____ as the 70% Units. The Monitoring Agent shall monitor compliance with the construction obligations set forth in this section in such manner as the Project Administrator may deem reasonably necessary.

3. Maximum Initial Sales Price/Maximum Resale Price. The Developer agrees to sell each Affordable Unit to an Eligible Purchaser for no more than the Maximum Initial Sales Price set forth in Exhibit B attached hereto and incorporated herein by reference. The initial Resale Price Multiplier for each Affordable Unit shall be as set forth on Exhibit B attached hereto. Prior to the delivery of the first deed for each Affordable Unit, the Monitoring Agent shall issue the Resale Price Certificate to the Developer, and the Developer shall record the Resale Price Certificate with the first deed of each Affordable Unit. On resale of an Affordable Unit, if the Maximum Resale Price includes Approved Capital Improvements, the Monitoring Agent shall issue a new Resale

Price Certificate which recalculates the Resale Price Multiplier, and the purchaser shall record the new Resale Price Certificate immediately after the recording of the deed to such Affordable Unit. The Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate shall apply to each subsequent resale of the Affordable Unit.

4. Subsidized Housing Inventory. The units in the Project designated as Affordable Units shall be included in the Subsidized Housing Inventory as that term is described in 760 CMR 31.04(1) in accordance with rules and regulations issued by DHCD, as amended from time to time.

5. Deed Riders; Affordability Requirement. (a) At the time of sale of each Affordable Unit by the Developer, the Developer shall execute and shall as a condition of the sale cause the purchaser of the Affordable Unit to execute a Deed Rider in the form of Exhibit C attached hereto and incorporated herein by reference. Such Deed Rider shall be attached to and made a part of the deed from the Developer to the initial purchaser of the Affordable Unit (the "Unit Purchaser"). Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Affordable Unit to notify the Monitoring Agent of the discounted purchase price more particularly described therein. The Municipality shall have the option upon terms more particularly described in the Deed Rider either to purchase the Affordable Unit or permit the seller to find an Eligible Purchaser. There shall be Affirmative Fair Marketing prior to the selection of an Eligible Purchaser.

(b) The Deed Rider shall require the seller and the Eligible Purchaser to execute at the time of resale a Deed Rider approved by the Monitoring Agent, which will be attached and made a part of the deed to the Eligible Purchaser, so that the affordability of the Affordable Unit will be preserved each time that subsequent resale of the Affordable Unit occurs. (The various requirements and restrictions regarding resale of an Affordable Unit contained in the Deed Rider are hereinafter referred to as the "Resale Restrictions").

(c) If, upon the initial resale or any subsequent resale of an Affordable Unit, the seller is unable to find an Eligible Purchaser for the Affordable Unit within one hundred eighty (180) days of the date the Affordable Unit is put on the market for sale, as determined by the date of the first advertisement for sale or the date an agreement was signed with a listing broker to market the Affordable Unit, whichever first occurs, the then-current owner of the Affordable Unit shall have the right to sell the Affordable Unit to any person, regardless of his income and assets and at fair market value (as more fully described in Section 4 of the Deed Rider), free of any future Resale Restrictions, provided that the difference between the actual resale price and the discounted purchase price for which the Municipality or an Eligible Purchaser could have purchased the Affordable Unit (the "Windfall Amount") shall be paid by the then-current owner of the Affordable Unit to the Municipality. The Municipality agrees that all sums constituting Windfall Amounts from the sale of Affordable Units shall be deposited in the Municipality's Affordable Housing Fund (as that term is hereinafter defined).

(d) In the event the Municipality purchases an Affordable Unit, the Municipality shall promptly after its acceptance of a deed of such Affordable Unit, either (i) sell the Affordable Unit, after Affirmative Fair Marketing, to an Eligible Purchaser at the greater of the same price for which it purchased the Affordable Unit plus any expenses incurred by the Municipality during its period of ownership subject to the Deed Rider or the Maximum Resale Price, with the recording of an Eligible Purchaser Certificate satisfactory in form and substance to the Monitoring Agent, or (ii) rent the Affordable Unit to a person or household who would qualify as an Eligible Purchaser upon terms and conditions applicable to low-income rental units under the Massachusetts Housing Finance Agency Enabling Act. The Municipality shall not sell or rent to a person or household who would not qualify as an Eligible Purchaser.

(e) Whether any such Affordable Unit will remain a Subsidized Housing Unit included in the Subsidized Housing Inventory shall be determined solely by the rules and regulations issued by DHCD then in effect. The parties agree that all reasonable measures should be taken so as to preserve the affordability of the Affordable Units during the full period of affordability, subject to the terms of the Deed Rider.

6. Intentionally Deleted.

7. Affordable Housing Fund. The Municipality agrees that upon the receipt by the Municipality of any Windfall Amount or any amount paid to the Municipality pursuant to the provisions of Sections 3 and 4 of the Deed Rider (the "Additional Windfall Amounts"), the Municipality shall deposit any and all such Windfall Amounts or Additional Windfall Amounts into an affordable housing fund to be used by the Municipality for the purpose of reducing the cost of Affordable Units to Eligible Purchasers upon resale or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for persons and families who qualify as Eligible Purchasers elsewhere in the Municipality, or if no affordable housing fund exists, such excess shall be delivered to the Municipality as a gift for the aforementioned purposes and deposited into a fund established pursuant to G.L. C. 44 §53 (the "Affordable Housing Fund").

8. Marketing Plan. Prior to marketing or otherwise making available for sale any of the Units, the Developer must obtain the Monitoring Agent's approval of a marketing plan (the "Marketing Plan") for the Affordable Units to be administered under the supervision of the Monitoring Agent. Such Marketing Plan must describe the buyer selection process for the Affordable Units, including any lottery or similar procedure for choosing among Eligible Purchasers, and must provide for Affirmative Fair Marketing of Affordable Units. At the option of the Municipality, the Marketing Plan may also include a preference for local residents for up to sixty-five percent (65%) of the Affordable Units; provided that, in the event a local resident preference is established, use of the preference shall not violate applicable fair housing laws and regulations. All costs of carrying out the Marketing Plan with respect to outreach, location and selection of the initial Eligible Purchasers shall be paid by the Developer; thereafter, such costs shall be paid from the Resale Fee (as defined in the Deed Rider). The Developer agrees to maintain for at least

five (5) years following the sale of the last Affordable Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and all Affirmative Fair Marketing efforts (collectively "Marketing Documentation") as described in the Marketing Plan. The Marketing Documentation may be inspected at any time by the Monitoring Agent. If at any time prior to or during the initial process of marketing the Affordable Units, the Monitoring Agent determines that the Developer has not adequately complied with the approved Marketing Plan, the Developer shall take such additional corrective measures as shall be specified by the Monitoring Agent. The Marketing Plan shall not be amended without the approval of the Monitoring Agent.

9. No Discrimination. Neither the Developer nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, or any other basis prohibited by law in the selection of buyers for the Units; and the Developer shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

10. Monitoring Agent. The Developer shall retain the Municipality for purposes of administration, monitoring and enforcement under this Agreement pursuant to an agreement substantially in the form of the Monitoring Services Agreement attached hereto as Exhibit D. All notices and reports required to be submitted under this Agreement shall be submitted simultaneously to the Monitoring Agent. In the event the Municipality shall cease to serve or shall fail to exercise diligence and care in its duties, a successor monitoring agent shall be selected in accordance with the provisions of Section 6 of the Monitoring Services Agreement.

11. Compliance. The Developer agrees to comply and to cause the Project to comply with all requirements of the Special Permit. The Chief Elected Official of the Municipality (from the date hereof through the date which is five (5) years after the Developer has sold the last unit in the Project) shall have access during normal business hours to all books and records of the Developer and the Project in order to monitor the Developer's compliance with the terms of this Agreement.

12. Recording. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded or filed with the Registry, and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to the Monitoring Agent evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

13. Developer's Representations, Covenants and Warranties. The Developer hereby represents, covenants and warrants as follows:

- (a) The Developer (i) is a limited liability company duly organized under the laws of _____, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted,

and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

- (b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project or other encumbrances).

14. Intentionally Deleted.

15. Intentionally Deleted.

16. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

17. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor) may from time to time designate by written notice:

Municipality:

Town of Acton
472 Main Street
Acton, MA 01720
Attn: _____

Developer:

_____ LLC
c/o OHC Development LLC
One Intercontinental Way, 3rd Floor
Peabody, MA 01960

18. Term. (a) The term of this Agreement shall continue until the date the Developer has sold all of the Affordable Units subject to the Deed Rider containing the Resale Restrictions in accordance with this Agreement. The recording of a discharge of this Agreement executed by the Municipality shall evidence the end of the Term.

(b) The Developer intends, declares and covenants on behalf of itself and its successors and assigns that this Agreement and the covenants, agreements and restrictions contained herein (i) shall be and are covenants running with the land, encumbering the Project for the term of this Agreement as provided in subsection (a) of this Section 18, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns and enure to the benefit of the Municipality and its successors and assigns for the term of the Agreement. Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Affordable Units at the Project pursuant to the requirements of this Agreement shall constitute an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws. Such Resale Restrictions shall be for the benefit of the Municipality, and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders.

19. Further Information. The Developer agrees to submit any information, documents or certifications requested by the Monitoring Agent which the Monitoring Agent shall deem necessary or appropriate to evidence the continuing compliance of the Developer with the terms of this Agreement.

20. Defaults; Remedies. The Developer agrees to give the Municipality written notice of any default, violation or breach of the obligations of the Developer within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If the Municipality becomes aware of a default, violation, or breach of obligations of the Developer hereunder without receiving a Default Notice from Developer, the Municipality shall give a notice of such default, breach or violation to the Developer (the "Municipality Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of the Municipality within ninety (90) days after the giving of the Default Notice by the Developer, or if no Default Notice is given, within ninety (90) days after the giving of the Municipality Default Notice, then at the Municipality's option, and without further notice, the Municipality may apply to any state or federal court for specific performance of this Agreement, or the Municipality may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement. Whether the Affordable Units continue

to be included in the Subsidized Housing Inventory after an uncured default shall be determined solely under DHCD rules and regulations then in effect.

21. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of this Agreement or a failure by the Developer to take appropriate actions to cure a default under this Agreement, the Municipality shall have the right to take appropriate enforcement action against the Developer, including, without limitation, legal action to compel the Developer to comply with the requirements of this Agreement. The Developer shall pay all fees and expenses (including legal fees) of the Municipality in the event enforcement action is taken against the Developer hereunder. The Developer hereby grants to the Municipality a lien on the Project, junior to the lien securing any loan on the Project, to secure payment of such fees and expenses. The Municipality shall be entitled to seek recovery of its respective fees and expenses incurred in enforcing this Agreement against the Developer and to assert a lien on the Project, junior to the lien securing any loan on the Project, to secure payment by the Developer of such fees and expenses. The Municipality may perfect a lien on the Project by recording/filing one or more certificates setting forth the amount of the costs and expenses due and owing in the Registry. A purchaser of the Project or any portion of the Project shall be liable for the payment of any unpaid costs and expenses which were the subject of a recorded/filed certificate prior to the purchaser's acquisition of the Project or any portion thereof.

22. Intent and Effect. The terms and conditions of this Agreement have been freely accepted by the parties. The provisions and restrictions contained herein exist to further the mutual purposes and goals of the Municipality and the Developer set forth herein to create and preserve access to land and to decent and affordable homeownership opportunities for eligible families who are often denied such opportunities for lack of financial resources.

23. Miscellaneous. (a) The Municipality shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

(b) The Developer, for itself and its successors and assigns, agrees to indemnify and hold harmless the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Municipality by reason of its relationship to the Project under this Agreement and not involving the Municipality acting in bad faith and with gross negligence.

(c) This Agreement shall not be amended without written consent of the Municipality.

24. Conflict. In the event of any conflict or inconsistency between the terms of the Special Permit and the terms of this Agreement, the terms of this Agreement shall control.

Executed as a sealed instrument as of the date first above written.

DEVELOPER:
_____ LLC

By: _____
its Manager

MUNICIPALITY

TOWN OF ACTON

By: _____
(Chief Elected Official)

Exhibit A - Legal Description

Exhibit B - Maximum Initial Sales Prices/Initial Resale Price Multipliers for Affordable
Units

Exhibit C - Form of Deed Rider

Exhibit D – Form of Monitoring Services Agreement

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____, 200__, before me, the undersigned notary public, personally appeared _____, the _____ of _____ in its capacity as the _____ of _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of _____ as _____ of _____.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____, 200__, before me, the undersigned notary public, personally appeared _____, the _____ of _____ in its capacity as the _____ of _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of _____ as _____ of _____.

Notary Public

My commission expires:

EXHIBIT A

Legal Description

NOTE: LEGAL DESCRIPTION MUST INCLUDE THE ENTIRE PARCEL SUBJECT TO THE PERMIT, AND DEVELOPER MUST HAVE LEGAL TITLE TO THE PROPERTY AT TIME OF RECORDING THIS AGREEMENT.

EXHIBIT B

Maximum Initial Sales Prices/Initial Resale Price Multipliers for Affordable Units

<u>Unit No.</u>	<u>Maximum Initial Sales Price</u>	<u>Initial Resale Price Multiplier</u>
	\$	

EXHIBIT C

[DEED RIDER]

(SEE ATTACHED)

DEED RIDER

annexed to and made part of that certain deed (the "Deed") from _____ ("Grantor") to _____ ("Grantee") dated _____, 200_

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the attached Deed ("Property") to the Grantee at a consideration which is less than the fair market value of the Property; and

WHEREAS, the Property is part of a project which was originally permitted under a Senior Residence Special Permit from the Town of Acton ("Municipality") Planning Board under Section 9B of the Municipality Zoning By-Law; and

WHEREAS, pursuant to the Senior Residence Special Permit, eligible purchasers such as the Grantee are given the opportunity to purchase certain property at a discount of the property's fair market value if the purchaser agrees to certain use and transfer restrictions, including the agreement to occupy the Property as a principal residence and to convey the Property on resale to an income-eligible purchaser, or to the Municipality, for an amount not greater than a maximum resale price, all as more fully provided herein; and

WHEREAS, in order to make it most likely that an income-eligible purchaser who can afford to buy the Property can be located when the Grantee desires to sell, the maximum resale price is limited by the percentage change in median income, with a credit for certain capital improvements, as more fully provided herein; and

WHEREAS, the Municipality will monitor compliance with the terms of this Deed Rider, and eligible purchasers such as the Grantee are required to pay to the Municipality, or its successor, a small percentage of the resale price upon the purchaser's conveyance of the Property, as more fully provided herein.

NOW, THEREFORE, as further consideration for the conveyance of the Property at a discount in accordance with the Special Permit, the Grantee, including his/her/their heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by, the Municipality and the Monitoring Agent (as herein defined).

1. Definitions. In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Affordable Housing Fund shall have the meaning set forth in Section 7 of the Regulatory Agreement.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms in the Property plus one.

Approved Capital Improvements means the documented commercially reasonable cost of capital improvements made to the Property due to normal wear and tear and needed modernizations; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and the original cost of such improvements may be discounted over time.

Area means the Primary Metropolitan Statistical Area which includes the Municipality.

Base Income Number means the most recently published Area median income number (MFI) as determined by HUD.

Chief Elected Official means, with respect to a town, the Board of Selectmen of such town.

Closing shall have the meaning set forth in Section 4(d) hereof.

Compliance Certificate shall have the meaning set forth in Section 4(j) hereof.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Developer means the entity designated as the Developer in the Regulatory Agreement.

80% Unit means a Unit to be sold to an Age Qualified Individual or household (where at least one household member is an Age Qualified Individual) who qualifies as a First-Time Homebuyer earning no more than eighty percent (80%) of the Base Income Number adjusted for household size for the Appropriate Size Household and owning assets not in excess of the limit set forth in the Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity ("Guidelines") issued by the Massachusetts Department of Housing and Community Development ("DHCD"), as amended from time to time.

Eligible Purchaser means an Age Qualified Individual who qualifies as a First-Time Homebuyer earning no more than eighty percent (80%) (as to the 80% Unit) and no more than seventy percent (70%) (as to the 70% Unit) of the Base Income Number adjusted for household size for the Appropriate Size Household and owning assets not in excess of the limit set forth in the Guidelines, as amended from time to time. If HUD discontinues publication of median income statistics, then the Monitoring Agent shall designate another measure of eligible income. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income and assets as the Monitoring Agent may require to justify designation as an Eligible Purchaser.

Eligible Purchaser Certificate shall have the meaning set forth in Section 5(a) hereof.

First-Time Homebuyer means an individual or household, none of whom have had an ownership interest in a principal residence at any time during the three (3)-year period prior to the purchase date of the Property, except that (i) any individual who is a displaced homemaker (as defined by DHCD for purposes of its Local Initiative Program or any successor comprehensive permit program) may not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse, and (ii) any elderly household (where at least one household member is 55 or over) may not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that any household member had an ownership interest in a principal residence at any time during the three (3)-year period.

HUD means the United States Department of Housing and Urban Development.

Initial Sales Price means the price at which the Property is first sold by the Developer to an Eligible Purchaser.

Maximum Resale Price means the sum of (A) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (B) the Resale Fee and any necessary marketing expenses (including broker's fees, if any) as may have been approved by the Monitoring Agent, plus (C) Approved Capital Improvements, if any (the original cost of which may be discounted over time); provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a creditworthy Eligible Purchaser earning seventy percent (70%) of the Base Income Number for the Appropriate Size Household as to the 80% Unit and sixty percent (60%) of the Base Income Number for the Appropriate Size Household as to the 70% Unit could obtain mortgage financing (as determined by the Monitoring Agent using the standards of DHCD then in effect for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the Grantee unless the Grantee agrees to accept a lesser price.

Monitoring Agent means the Municipality, as monitoring agent under the Monitoring Services Agreement, or any successor monitoring agent selected in accordance with the provisions of Section 6 of the Monitoring Services Agreement.

Monitoring Services Agreement means the Monitoring Services Agreement of even date with the Regulatory Agreement among the Developer and the Municipality in the form attached as Exhibit D to the Regulatory Agreement.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 6(b) hereof.

Municipal Purchaser Certificate shall have the meaning set forth in Section 5(a) hereof.

Permitted Indebtedness shall have the meaning set forth in Section 6(a) hereof.

Permitted Mortgagee shall have the meaning set forth in Section 6(a) hereof.

Project means the 64-unit development known as _____ Condominium at a _____ acre site located on _____ in the Municipality, which, pursuant to the terms of the Special Permit includes _____ 80% Units and _____ 70% Units.

Registry means the Middlesex South District Registry of Deeds.

Regulatory Agreement means the Regulatory Agreement among the Municipality and the Developer dated _____ and recorded with the Registry in Book _____, Page _____.

Related Party shall have the meaning set forth in Section 6(a) hereof.

Resale Fee means three percent (3%) of the Maximum Resale Price, to be paid to the Monitoring Agent as compensation for monitoring compliance with the terms of this Deed Rider, including the resale process, as more fully described in Section 11 hereof.

Resale Price Certificate means the certificate issued by the Monitoring Agent and recorded with the first deed of the Property from the Developer, or the subsequent certificate (if any) issued by the Monitoring Agent in accordance with Section 3 of the Regulatory Agreement, which sets forth the Resale Price Multiplier to be applied on the Grantee's sale of the Property, according to the terms of this Deed Rider, for so long as the restrictions set forth herein continue.

Resale Price Multiplier means _____, which is the number set forth in the most recently recorded Resale Price Certificate. The original Resale Price Multiplier was calculated by the Monitoring Agent by dividing the Initial Sale Price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Purchaser, and unless a new Resale Price Certificate is recorded as provided below and in accordance with Section 3 of the Regulatory Agreement, this number will be multiplied by the Base Income Number at the time of resale by the Grantee to determine (in part) the Maximum Resale Price on such resale. In the event that the purchase price paid for the Property by the Grantee includes Approved Capital Improvements, the Resale Price Multiplier will be recalculated by the Monitoring Agent by dividing the purchase price so paid (not including the Resale Fee) by the Base Income Number at the time of such purchase, and a new Resale Price Certificate will be recorded immediately following the recording of this Deed.

Example: Assume the Base Income Number at the time of the initial sale is \$80,800 and the Initial Sale Price is \$150,000. The Resale Price Multiplier would equal 1.86 ($150,000/80,800 = 1.86$). Then assume that at the time the initial

purchaser sells the unit, the Base Income Number has increased to \$88,072 and the cost of Approved Capital Improvements (e.g., a new roof) equals \$5,000, the Maximum Resale Price (herein defined) would be calculated as follows: $\$88,072 \times 1.86 = \$163,814$ + the Resale Fee (herein defined) + \$5,000. If the subsequent purchaser sells the unit at a time when the Base Income Number is \$85,000, the Maximum Resale Price would be calculated as follows: (i) recalculated Resale Price Multiplier = 1.92 ($\$163,814 / \$85,000 = 1.92$); (ii) $\$85,000 \times 1.92 = \$163,200$ + the Resale Fee + Approved Capital Improvements (if applicable).

70% Unit means a Unit to be sold to an Age Qualified Individual or household (where at least one household member is an Age Qualified Individual) who qualifies as a First-Time Homebuyer earning no more than seventy percent (70%) of the Base Income Number adjusted for household size for the Appropriate Size Household and owning assets not in excess of the limit set forth in the Guidelines, as amended from time to time.

Special Permit means the Senior Residence Special Permit issued by the Planning Board of the Municipality with respect to the Project, recorded in the Registry in Book _____, Page _____.

Term means, unless terminated earlier according to Section 6 hereof, the period from the date hereof until the earliest to occur of (i) the termination of the term of affordability set forth in the Special Permit, (ii) the recording of a Compliance Certificate, (iii) the recording of an Eligible Purchaser Certificate and a new Deed Rider executed by the Eligible Purchaser referenced in the Eligible Purchaser Certificate, which new Deed Rider the Eligible Purchaser Certificate certifies is in form and substance satisfactory to the Monitoring Agent, or (iv) the conveyance of the Property to the Municipality and the recording of a Municipal Purchaser Certificate as set forth herein.

2. Owner-Occupancy/Principal Residence. The Property shall be occupied and used by the Grantee as his, her or their principal residence. Any use of the Property or activity thereon which is inconsistent with the purpose of this Deed Rider is expressly prohibited.

3. Restrictions Against Leasing and Junior Encumbrances. The Property shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent; provided, however, that this provision shall not apply to a first mortgage granted in connection with this conveyance. Any rents, profits, or proceeds from any transaction described in the last preceding sentence which transaction has not received the prior written consent of the Monitoring Agent shall be recoverable by the Monitoring Agent, together with all costs of collection, including attorneys fees, and shall be paid upon recovery and payment of costs to the Municipality for deposit to its Affordable Housing Fund.

4. Provisions of Resale. (a) When the Grantee or any successor in title to the Grantee shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Grantee shall notify the Monitoring Agent in writing of the Grantee's

intention to so convey the Property (the "Conveyance Notice"). The Conveyance Notice shall set forth the Resale Price Multiplier and the Maximum Resale Price of the Property. Upon giving the Conveyance Notice to the Monitoring Agent, the Grantee shall promptly begin locating an Eligible Purchaser. The Eligible Purchaser located by the Grantee shall purchase the Property at the Maximum Resale Price within one hundred eighty (180) days from the date of the first advertisement for sale, or the date an agreement was signed with a listing broker to market the Affordable Unit, whichever is earlier, subject to those extension provisions set forth in this Section 4. The Municipality shall also have the right to purchase the Property at the Maximum Resale Price, in which event the purchase shall occur within ninety (90) days after the Monitoring Agent receives the Conveyance Notice, or such further time as reasonably requested to arrange for details of closing.

(b) The Grantee shall devote diligent marketing efforts to locate an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above.

(c) If an Eligible Purchaser is selected to purchase the Property, or if the Municipality elects to purchase the Property, the Property shall be conveyed by the Grantee to such Eligible Purchaser or to the Municipality as the case may be, by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Grantor to Grantee, (v) such additional easements, restrictions, covenants and agreements of record as the Eligible Purchaser or the Municipality, as applicable, consents to, such consent not to be unreasonably withheld or delayed, and (vi) a Deed Rider satisfactory in form and substance to the Monitoring Agent which the Grantee hereby agrees to annex to said deed.

(d) Said deed shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property), exercised by written notice to the Grantee at least five (5) days prior to the delivery of the deed, at such other place as the Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property) may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the Eligible Purchaser (or the Municipality if the Municipality is purchasing the Property) to the Grantee, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in subsection (a) above.

(e) To enable Grantee to make conveyance as herein provided, Grantee may, if so desired at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed. Nothing contained herein as to the Grantee's obligation to remove defects in title or to make conveyance or

to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the Eligible Purchaser or the Municipality to take title, nor anything else in this Deed Rider shall be deemed to waive, impair or otherwise affect the priority of the Municipality's rights herein over matters appearing of record, or occurring, at any time after the recording of this Deed Rider, all such matters so appearing or occurring being subject and subordinate in all events to the Municipality's rights herein.

(f) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Eligible Purchaser or by the Municipality.

(g) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date hereof, reasonable wear and tear only excepted.

(h) If Grantee shall be unable to give title or to make conveyance as above stipulated, or if any change of condition in the Property not included in the above exception shall occur, then Grantee shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition hereby provided for. The Grantee shall use best efforts to remove any such defects in the title whether voluntary or involuntary and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Grantee that such defect has been cured or that the Property has been so restored. The Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property) shall have the election, at either the original or any extended time for performance, to accept such title as the Grantee can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Grantee shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Grantee shall, unless the Grantee has previously restored the Property to its former condition, either:

(A) pay over or assign to the Eligible Purchaser or the Municipality, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonable expended by the Grantee for the partial restoration, or

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the Eligible Purchaser or to the Municipality a credit against the purchase price, on delivery of the deed, equal to said amounts

so retained by the holder of the said mortgage less any amounts reasonably expended by the Grantee for any partial restoration.

(i) If the Grantee is successful in locating an Eligible Purchaser within one hundred eighty (180) days, but the Eligible Purchaser is unable to secure mortgage financing so as to be able to complete the purchase of the Property, the Grantee will have an additional sixty (60) days from the date of written notification from the first Eligible Purchaser that he/she/they are unable to complete the purchase, to find another Eligible Purchaser to purchase the Property.

(j) If the Grantee fails to locate an Eligible Purchaser who purchases the Property within one hundred eighty (180) days (with any requested additional time for closing details) (or within the sixty (60)-day period allowed under the previous subsection), and the Municipality does not purchase the Property during said period, then, no later than six (6) months following expiration of such period, the Grantee may convey the Property to any third party at no less than fair market value free and clear of all rights and restrictions contained herein, including, but not limited to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality for deposit to its Affordable Housing Fund. Upon receipt of this excess amount, the Municipality shall issue to the third party a certificate (the "Compliance Certificate") in recordable form reflecting the Municipality's receipt of the excess amount, if any, that all rights, restrictions, agreements and covenants contained herein are henceforth null and void and that the sale of the Property to the third party is consistent with the terms of this Deed Rider. This Compliance Certificate is to be recorded in the Registry. This Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality and that the rights, restrictions, agreements and covenants set forth herein are null and void. The sale price to a third party shall be subject to the Monitoring Agent's prior approval, giving due consideration to such factors as the appraised value of the Property, time on the market, marketing efforts and economic conditions, but in no event less than fair market value.

(k) The Grantee understands and agrees that nothing in this Deed Rider or the Regulatory Agreement in any way constitutes a promise or guarantee by the Municipality that the Grantee shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

5. Resale and Transfer Restrictions. (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the Eligible Purchaser or the Municipality, to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and (i) if the Property is conveyed to an Eligible Purchaser,

unless a certificate (the "Eligible Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent, which Eligible Purchaser Certificate refers to the Property, the Grantee, the Eligible Purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the Eligible Purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the Eligible Purchaser, which new Deed Rider is substantially in the same form as this Deed Rider; or (ii) if the Property is conveyed to the Municipality unless a Certificate (the "Municipal Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent, which Municipal Purchaser Certificate refers to the Property, the Grantee, the Municipality, and the Maximum Resale Price for the Property and states that the proposed conveyance, sale or transfer of the Property to the Municipality is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the Municipality, which new Deed Rider is substantially in the same form as this Deed Rider; or (iii) pursuant to Section 4(j), any amount in excess of the Maximum Resale Price which is paid to the Grantee by a purchaser who is permitted to buy the Property pursuant to Section 4(j), is paid by the Grantee to the Municipality, and the Municipality executes and delivers a Compliance Certificate as described in Section 4(j) for recording with the Registry.

(b) Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate, an Eligible Purchaser Certificate or a Municipal Purchaser Certificate referring to the Property as conclusive evidence of the matters stated therein and may record such Certificate in connection with conveyance of the Property, provided, in the case of an Eligible Purchaser Certificate and a Municipal Purchaser Certificate, the consideration recited in the deed or other instrument conveying the Property upon such resale shall not be greater than the consideration stated in the Eligible Purchaser Certificate or the Municipal Purchaser Certificate, as the case may be.

(c) Within ten (10) days of the closing of the conveyance of the Property from Grantor to Grantee, the Grantee shall deliver to the Monitoring Agent a copy of the Deed of the Property, together with recording information. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

6. Rights of Mortgagees. (a) Notwithstanding anything herein to the contrary, but subject to the next succeeding paragraph hereof, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns (other than the Grantee or any person related to the Grantee by blood, adoption, or marriage (any of the foregoing, a "Related Party")) shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, provided that the holder of such mortgage has given the Municipality not less than sixty (60) days prior written notice of its intention to foreclose upon its mortgage or

to accept a conveyance of the Property in lieu of foreclosure, and provided further that the principal amount secured by such mortgage did not exceed one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage (the "Permitted Indebtedness"), then the rights and restrictions contained herein shall not apply to such holder upon such acquisition of the Property, any purchaser (other than a Related Party) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than a Related Party) of the Property from such holder, and such Property shall thereupon and thereafter be free from all such rights and restrictions. The holder of Permitted Indebtedness is referred to herein as a "Permitted Mortgagee."

(b) In the event such Permitted Mortgagee conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the greater of (i) the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the Permitted Mortgagee is entitled to recover pursuant to the terms of the mortgage (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price, such excess shall be paid to the Municipality for its Affordable Housing Fund in consideration of the loss of the Property as affordable housing after a final judicial determination that the Municipality is entitled to such excess, the costs of such determination to be deducted from the excess prior to payment to the Municipality. To the extent the Grantee possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Grantee hereby assigns its interest in such amount to said holder for payment to the Municipality.

(c) A Permitted Mortgagee shall notify the Municipality in the event of any default for which the Permitted Mortgagee intends to commence foreclosure proceedings, which notice shall be sent to the Municipality as set forth in this Deed Rider. No failure to notify the Municipality pursuant to the previous sentence shall impair the validity of a foreclosure.

(d) The Grantee grants to the Municipality the right and option to purchase the Property upon receipt by the Municipality of notice in any form (including notice by newspaper publication deemed to be received on the date of publication) of an impending foreclosure against the Property. In the event the Municipality intends to exercise its option, the Municipality shall purchase the Property at a price equal to the greater of the Maximum Resale Price or the Mortgage Satisfaction Amount within sixty (60) days of receipt of such notice. The deed to the Municipality shall include a deed rider containing all of the rights and restrictions set forth in this Deed Rider and otherwise satisfactory in form and substance to the Monitoring Agent which the Municipality, as a condition to such purchase, agrees to annex to said deed. Any excess received by the Permitted Mortgagee over the Mortgage Satisfaction Amount shall be paid to the Grantee (provided, that in the event that such excess shall be so paid to the Grantee, the Grantee shall thereafter indemnify such Permitted Mortgagee against loss or damage to such Permitted Mortgagee resulting from any claim made by any other party to the extent that such claim is based upon payment of such excess by such Permitted Mortgagee to the Grantee in accordance herewith, provided that such Permitted Mortgagee shall give the

Grantee prompt notice of any such claim and shall not object to intervention by the Grantee in any proceeding relating thereto).

(e) If any person who was a Related Party prior to any foreclosure acquires an interest in the Property within ten (10) years after foreclosure, then all covenants and options contained herein shall apply to all subsequent occupancy and sale of the Property.

(f) A certificate signed under penalties of perjury by a purchaser at a foreclosure sale (or any subsequent purchaser) certifying that such purchaser is not a Related Party shall, if recorded with the Registry, be conclusive evidence that such purchaser is not a Related Party.

7. Covenants to Run With the Property. (a) It is intended and agreed that all of the agreements, covenants, rights and restrictions set forth herein shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Municipality, its successors and assigns, during the Term of this Deed Rider.

(b) This Deed Rider and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws.

(c) The Grantee intends, declares and covenants on behalf of Grantee and Grantee's successors and assigns (i) that this Deed Rider and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Grantee's successors in title, (ii) are not merely personal covenants of the Grantee, and (iii) shall bind the Grantee, and Grantee's successors and assigns and enure to the benefit of the Municipality, and its successors and assigns, for the Term. Grantee hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(d) Without limitation on any other rights or remedies of the Grantor and the Municipality, their successors and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Deed Rider, shall, to the maximum extent permitted by law, be voidable by the Municipality, its successors and assigns, by an action to enforce such rights, restrictions, covenants, and agreements.

8. Notice. Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Town of Acton
472 Main Street
Acton, MA 01720
Attn: _____

Grantor:

Grantee:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

9. Further Assurances. The Grantee agrees from time to time, as may be reasonably required by the Municipality, to furnish the Municipality with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other material information pertaining to the Property or the Grantee's conformance with the requirements of the Special Permit.

10. Enforcement. (a) The rights hereby granted shall include the right of the Municipality to enforce this Deed Rider independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief against any violations including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality.

(b) Without limitation of any other rights or remedies of the Municipality, or its successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Deed Rider, the Municipality shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Deed Rider;
- (ii) money damages for charges in excess of the Maximum Resale Price, if applicable;

(iii) if the violation is a sale of the Property at a price greater than the Maximum Resale Price as provided herein, the Municipality shall have the option to locate an Eligible Purchaser or purchase the Property on the terms and conditions provided herein and the purchase price shall be a price which complies with the provisions of this Deed Rider;

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Deed Rider in the absence of a Certificate of Compliance, by an action in equity to enforce this Deed Rider; and

(v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchasers.

(c) In addition to the foregoing, in the event of a violation of the provisions of this Deed Rider, the Municipality may take appropriate enforcement action against the Grantee or the Grantee's successors in title, including, without limitation, legal action to compel the Grantee to comply with the requirements of this Deed Rider. The Grantee hereby agrees to pay all fees and expenses (including legal fees) of the Municipality in the event successful enforcement action is taken against the Grantee hereunder. The Grantee hereby grants to the Municipality a lien on the Property, junior to the lien of any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Deed Rider against the Grantee and to assert such a lien on the Property to secure payment by the Grantee of such fees and expenses.

(d) The Grantee for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Municipality the right to enter upon the Property for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Property which the Municipality may determine to be necessary or appropriate pursuant to court order, or with the consent of the Grantee to prevent, remedy or abate any violation of this Deed Rider.

11. Monitoring Agent Services; Fees. The Monitoring Agent has been engaged to monitor compliance of the Project with ongoing requirements of the Comprehensive Permit and this Deed Rider, including the requirement that the Property be sold and resold to Eligible Purchasers (or to the Municipality) as provided therein. As partial compensation for providing these services, the Monitoring Agent shall receive the Resale Fee on the sale of the Property to an Eligible Purchaser or any other purchaser in accordance with the terms of this Deed Rider. This fee shall be paid by the Grantee as a closing cost at the time of Closing, and payment of the fee of the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser and persons claiming under the new purchaser for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

12. Severability. If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

Executed as a sealed instrument this _____ day of _____, 200_.

Grantor:

Grantee:

By _____

By _____

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____, 200__, before me, the undersigned notary public, personally appeared _____, the _____ of _____ in its capacity as the _____ of _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of _____ as _____ of _____.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this ____ day of _____, 200__, before me, the undersigned notary public, personally appeared _____, the _____ of _____ in its capacity as the _____ of _____, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of _____ as _____ of _____.

Notary Public

My commission expires:

EXHIBIT D

[MONITORING SERVICES AGREEMENT]

(SEE ATTACHED)

MONITORING SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of ____, 200_ by and between _____, LLC, a _____ limited liability company, having an address c/o OHC Development LLC, One Intercontinental Way, Peabody, MA 01960 ("Developer"), and the TOWN OF ACTON with an address at Town Hall, 472 Main Street, Acton, MA 01720 ("Monitoring Agent").

Background

A. The Town of Acton Planning Board ("Municipality"), has granted a Senior Residence Special Permit ("Special Permit") for a project containing sixty four (64) condominium units on _____ in Acton, Massachusetts ("Project") and the Project is subject to a Regulatory Agreement dated _____, 200_ (the "Regulatory Agreement") between the Municipality and the Developer.

B. Pursuant to the Special Permit and the Regulatory Agreement, at least ____ units in the Project (the "Affordable Units") are required to be sold to households whose incomes do not exceed 80% of the median income and ____ units are required to be sold to households whose incomes do not exceed 70% of the median income (adjusted for household size) for the Boston Primary Metropolitan Statistical Area. In addition, the Affordable Units will be subject to deed riders governing resale (the "Affordability Requirement") in perpetuity or, if a perpetual restriction is not legally permissible, for a period ending ninety-nine (99) years from the date hereof.

C. Pursuant to requirements of the Regulatory Agreement, the Developer has agreed to retain the Monitoring Agent to perform monitoring and enforcement services regarding compliance of the Project with the Affordability Requirement.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Monitoring Services. Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirements, including:

- (i) Review of the substantive compliance of the Project with the Affordability Requirement;
- (ii) Review of income certifications, deeds and deed riders with respect to initial sales of Affordable Units;
- (iii) Certification to the owners of Affordable Units as to the maximum sales price that a household having the Base Income Number (as defined in the Regulatory Agreement) can pay for an Affordable Unit; and

- (iv) Monitoring of resales of Affordable Units for compliance with the terms of the applicable deed riders and issuance of certifications, as appropriate, approving resales and the payment of recapture amounts.

The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Project and the Developer with the Affordability Requirement. The services hereunder shall include follow-up discussions with the Developer, if appropriate, after an event of noncompliance.

2. Monitoring Services Fee. The Monitoring Agent shall receive a fee of **Five hundred (\$500.00)** Dollars from the Developer at the time of execution of this Agreement. Such fee shall constitute payment for the services of the Monitoring Agent with respect to the initial sales of the Affordable Units. Thereafter, as provided in the Deed Rider attached to the deed of each Affordable Unit, the Monitoring Agent shall receive a fee of **three (3.00%)** percent of the Maximum Resale Price, to be paid by each Seller of the Affordable Unit at each closing as a condition precedent to closing, for the services with respect to monitoring the sales transaction as provided in this Agreement.

If the Monitoring Agent's fee is not paid at the time of closing, the Monitoring Agent shall be entitled to payment from the purchaser of the Affordable Unit and to bring an action and seek an attachment of the interest of the purchaser in the Affordable Unit.

3. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of the Regulatory Agreement or a failure by the Developer to take appropriate actions to cure a default under the Regulatory Agreement, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Developer, including, without limitation, notice to the Municipality or legal action to compel the Developer to comply with the requirements of the Regulatory Agreement. In the event of a violation of the provisions of a deed rider, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Unit owner of the Unit owner's successors in title, including, without limitation, notice to the Municipality or legal action to compel the Unit owner to comply with the requirements of the relevant deed rider. The form of deed rider will provide for payment by the Unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Unit owner thereunder. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing a deed rider against the Unit owner and in any action to seek an attachment of the relevant Unit to secure payment of such fees and expenses.

The Monitoring Agent shall look solely to the reimbursement rights described above for payment of the Monitoring Agent's costs and expenses. Nothing in this Agreement shall be construed to require the Monitoring Agent to expend more than \$20,000 in enforcing the provisions of the Regulatory Agreement or to take any particular enforcement action against Developer.

4. Term. The monitoring services are to be provided for the full term of the Regulatory Agreement. The term of this Agreement and the Monitoring Services Agreement shall be commensurate with the term of the Deed Rider and this Agreement shall expire on the date on which there are no longer any Deed Riders encumbering any of the Affordable Units described herein.

5. Responsibility of Monitoring Agent. The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

6. Indemnity. The Developer agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Project under this Agreement and not involving claims that the Monitoring Agent acted in bad faith or with gross negligence.

7. Applicable Law. This Agreement, and the application or interpretation hereof, shall be governed by the laws of the Commonwealth of Massachusetts.

8. Binding Agreement. This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns. In the event that the Monitoring Agent shall cease to exist hereunder, then a successor Monitoring Agent may be appointed by the Municipality.

9. Assignment. The Monitoring Agent may assign its rights and obligations under this Agreement to a responsible entity in its sole discretion, with notice to the Developer.

10. Headings. All paragraph headings in this Agreement are for convenience or reference only and are not intended to qualify the meaning of the paragraph.

Signatures on following page

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

DEVELOPER:

By: _____
Manager

MONITORING AGENT

The Town of Acton Board of Selectmen

#339446 v1/37372/28

Woodlands at Laurel Hill,

Special Permit Application – Senior Residence:

- Draft Legal Documents- Age-Related Restrictions

AGE RELATED RESTRICTIONS

- a. Each Unit is hereby restricted to residential use and occupancy by senior citizens, 55 years of age or older ("Qualifying Persons"), their spouses (including the surviving spouse of a deceased Qualifying Person), and/or a relative by blood or marriage of a Qualifying Person or of the spouse of a Qualifying Person, provided that such relative must be 55 years of age or older ("Qualified Relative"), except during a six (6) month period following the death or departure from the household of such Qualifying Person, his or her spouse, or Qualified Relative.
- b. Every sale, resale or other conveyance of every Unit, whether by the Declarant, or its successors and/or assigns, shall be to: (i) at least one Qualifying Person; (ii) the spouse or blood relative of a Qualifying Person, so long as the Qualifying Person occupies and intends to occupy the Unit as his or her residence; or (iii) a trust or other estate-planning vehicle under which the Qualifying Person holds a beneficial interest, so long as the Qualifying Person (or after the death of the Qualifying Person, his or her spouse or Qualified Relative) occupies or intends to occupy the Unit as his or her residence.
- c. Each Unit shall be occupied by no more than two persons as a single-family residence. A third occupant may be allowed for the express purpose of providing health care to the occupants.
- d. Overnight guests (including children of a Qualifying Person) who are younger than fifty-five (55) years of age shall be allowed for reasonable visitation periods not to exceed two weeks in duration and not to exceed two weeks per year, provided that: (i) a child of a Qualifying Person who is a full-time student residing other than in the Unit during the school year may reside in the Unit during the summer months and school breaks, not to exceed three (3) months per year; and (ii) up to two children per Unit, under the age of eighteen, whose parents are deceased or otherwise legally or physically incapacitated and unable to perform their parental functions, shall be allowed to reside with their grandparents without limitation as to time.
- e. Any lease or rental agreement for any Unit shall be to a Qualifying Person, the spouse of a Qualifying Person (including the surviving spouse of a deceased Qualifying Person), and/or a Qualified Relative, provided that the tenant(s) all meet the occupancy requirements of Section a. above.
- f. It shall be a condition precedent to any conveyance of a Unit that the seller verify the ages of the prospective occupants and purchasers by delivery to the trustees of the Condominium Trust at least ten (10) days prior to any proposed conveyance of an affidavit executed before a notary public under the pains and penalties of perjury that the Unit is to be occupied in compliance with the terms of subsections a and c (and, in the event of a lease, subsection e) and is

to be owned in compliance with the terms of subsection b, which affidavit shall be accompanied by a copy of the birth certificate(s), passports(s), drivers licenses(s) or other documentation reasonably evidencing same ("Age Documentation").

#339752 v1/37372/28

Project Principals:

The Lot 4, sEnior Residence project is comprised of three development entities whose information is provided below:

- ❑ **Applicant/Owner:** Woodlands at Laurel Hill, LLC, c/o Omni Properties.
- ❑ **Omni's Equity Partner/ Project Developer:** Avalon Bay Communities, Inc. who is proposed as the overall property developer.
- ❑ **Lot 4 Developer/Joint Venture Partner:** OHC Development, LLC, who will be developing Lot 4 as a joint-venture with AvalonBay Communities, Inc.

Woodlands at Laurel Hills, LLC:

Woodlands at Laurel Hill, LLC is an entity of Omni Properties LLC ("Omni") of Concord, MA. Their resume and experience in development was provided as part of the Comprehensive Permit application. They are the principals who have assembled the Woodlands at Laurel Hill a 380 unit, approved apartment community in Acton and Westford and 64 townhouse style "for sale" condominium units. Omni Properties development activities include retail, office, light industrial and residential developments. Omni also provides development consulting services to parties for the oversight of projects ranging from 5,000 to 1,000,000 square feet. In addition, Omni provides assistance to clients seeking commercial real estate financing. This includes financing acquisitions, new construction or refinancing debt. Omni has successfully assisted companies through work-out situations achieving positive outcomes for the borrower and lender. The company has developed specialized relationships with regional and local banks and mortgage brokers dealing exclusively with life insurance holding asset companies.

Woodlands/Omni's References Include:

Mr. Don P. Johnson, Town Manager, Town of Acton, MA, (978) 264-9612

Mr. Steven Ledoux, Town Manager, Town of Westford, MA, (978) 692-5500

Avalon Bay Communities, Inc.:

AvalonBay Communities, Inc. is in the business of developing, redeveloping, acquiring and managing high-quality apartment communities in the high barrier-to-entry markets of the United States. These markets are located in the Northeast, Mid-Atlantic, Midwest, Pacific Northwest and Northern and Southern California regions of the country. At March 31, 2006 AvalonBay owned or held interest in 158 apartment communities containing 46,117 apartment homes in ten states and the District of Columbia, of which 16 communities were under construction and four communities were under reconstruction. In addition, the company held future development rights for 48 communities. AvalonBay Communities, Inc.'s common stock trades on the New York

Stock Exchange and under the ticker symbol "AVB." AvalonBay Communities, Inc. (AVB) is a Maryland Corporation that is treated for federal income purposes as a REIT. As a REIT the corporation self-funds its development endeavors and therefore is the sole major source of equity.

Among many favorable attributes of the company, one very important contribution AvalonBay offers is our experience in successfully working with numerous municipalities in the permitting of over 5,400 apartment homes throughout Greater Boston, in which the company is able to offer favorable references in all municipalities in which residential communities have been developed. These development endeavors provide *real* examples of the high-quality communities developed throughout Greater Boston. AvalonBay enjoys an outstanding reputation as relates to our ability to work with various organizations in administering and managing affordable housing.

Recently, the following deals were closed: Avalon at Chestnut Hill, Avalon Shrewsbury, Avalon Danvers, Avalon Woburn. Together, these communities represent the development of over 1,334 housing units with a total capitalization of \$261,633,000. All developments are self-funded with AvalonBay capital.

Transactional references, including contact names and phone numbers.

- Avalon at Chestnut Hill
Olympus Partners Real Estate
Clay Scheetz, Vice President
(212) 698-8809
- Avalon Shrewsbury
Moss Development, Inc.
Bob Moss, President
(508) 366-1966
- Avalon Danvers
Division of Capital Asset Management (DCAM)
Commonwealth of Massachusetts
Peter Norstrand, Deputy Director
(617) 727-4030
- Avalon Woburn
AvalonBay Communities, Inc.
Scott Dale, Vice President of Development
(617) 847-1202

OHC Development Company Overview

OHC Development, LLC is a leading regional builder of custom and semi-custom single-family homes, townhouses and condominium projects in both the standard and age-restricted markets. From its headquarters in Peabody, Massachusetts, OHC is developing projects throughout eastern Massachusetts and southern New Hampshire, with pipeline developments targeted in Massachusetts and coastal Connecticut. In 2005, the Company delivered 127 units generating \$48.0 million in total sales. The Company projects delivery of approximately 1,025 additional units, including projects currently underway and pipeline projects, generating revenues of \$402.2 million through 2010. The company employs a professional staff with a wide range of development and construction expertise including licensed builders and site superintendents, operations management, customer service, finance and a complete site work division. OHC's employees, subcontractors and suppliers have worked together to earn the company a reputation for quality and value, making it well-positioned for continued success.

The Company was founded in 1999 by its current principals, Albert and Tom Ellis. Drawing upon the principals' 40 years of combined development experience, the company has built an outstanding reputation as a regional residential builder. It has a highly successful record of developing well-situated in-fill sites in highly desirable markets. In addition, the Company has proven to be particularly adept in developing a variety of home designs to meet the specific demands of a given market. In fact, OHC's extensive familiarity with these development issues, combined with the relationships it has forged over several decades of activity in the region, are two of the key reasons for the company's success.

OHC DEVELOPMENT, LLC RECENT PROJECTS

Project Name	Project Description	Location	Total Units	Completion
Stnut Hill Estates	24 single family home subdivision	Westford, MA	25	2003
My Brook Farm	3 single family home development	Southborough, MA	5	2003
Older Farm	5 single family home subdivision	Boxborough, MA	6	2003*
My Shepherd Estates	16 single family home subdivision	Littleton, MA	16	2004
Motor Estates	5 single family homes	Chelmsford, MA	5	2004
Apple D'Or Estates	50 single family home subdivision	Littleton, MA	50	2005
King Rock	11 single family homes	Northbridge, MA	11	2006
Perus Ave	2 single family homes	Gloucester, MA	2	2006
Old Pond	45 single family detached condominiums. Age Restricted.	Walpole, MA	45	2006
Is at Crockett Farm	51 two and three bedroom townhomes	Stratham, NH	51	2006
nut Place	80 unit condominium in 4-story building, including 14 affordable units	Peabody, MA	80	2006
Man Woods	56 attached townhomes including 14 affordable units.	Canton, MA	56	2006
arren St	17 attached townhomes in a 15 unit building and one duplex	Peabody, MA	17	2006
op Estates	6 single family homes	Danvers, MA	6	2006
at Crockett Farm	23 single family home condominium units	Stratham, NH	23	2007
niper Village	60 attached townhomes including 15 affordable units	Peabody, MA	60	2007

*One lot remaining.

**APPLICATION for a
SENIOR RESIDENCE SPECIAL PERMIT**

Refer to the "Rules and Regulations for Senior Residence Special Permits" available from the Planning Department for details on the information and fees required for this application. Contact the Planning Department at 978-264-9636 with any questions concerning the Rules. Incomplete applications may be denied.

Please type or print your application.

1. Location and Street Address of Site
Lot 4, off Laurel Hill Drive
Name of Proposed Development "The Woodlands at Laurel Hill"
2. Applicant's Name Woodlands at Laurel Hill, LLC - David E. Hale, Manager
Address c/o Omni Properties, LLC 676 Elm Street, Suite 3, Concord, MA 017
Telephone (978) 369-4884
3. Record Owner's Name See attached list
Address _____
Telephone _____
4. Zoning District(s) of Parcel(s) Residence 10/8; Affordable housing overlay district
Town Atlas Map(s)/ Parcel Number(s) Map _____, a portion of parcel _____ Subdistrict _____
5. a) Total Area of Development 16.54 ac. b) Number of Dwelling Units Proposed 64
c) Number of Affordable Units 6
d) Number of Accessible or Adaptable Dwelling Units for Persons with Disabilities 0
Number of Affordable Accessible or Adaptable Units 0
e) Total Area of Common Land 8.62 ac. f) Percent Common Land 52%
g) Total Length of Road(s) in feet: Public 0 Private 3,100 lf
h) Number of Parking Spaces: Total 144 Per Unit 2.25
i) Method of Sewage Disposal Gravity sewer to off-site wastewater treatment plant
6. Deed Book & Page Number(s) or Land Court Certificate Number(s) _____
7. Attach draft legal documents that restrict occupancy of the dwelling units to seniors.
8. Attach draft legal documents that secure dwelling units as affordable.
9. Attach a schedule showing the completion of market rate and affordable dwelling units.

The undersigned hereby apply to the Planning Board for a public hearing and Senior Residence Special Permit under the Bylaw.

The undersigned hereby certify that the information on this application and plans submitted herewith is correct, and that the application complies with all applicable provisions of Statutes, Regulations, and Bylaws to the best of his/her knowledge. The above is subscribed to and executed by the undersigned under the penalties of perjury in accordance with Section 1-A of Chapter 268, General Laws of the Commonwealth of Massachusetts.

<u>Signature of Petitioner(s)</u>	<u>Signature of Petitioner(s)</u>	<u>Date</u>
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David E. Hale, Manager - Woodlands at Laurel Hill, LLC

RECORD OWNER'S KNOWLEDGE AND CONSENT

I hereby assert that I have knowledge of and give my consent to the application presented above.

<u>Signature of Record Owner(s)</u>	<u>Signature of Record Owner(s)</u>	<u>Date</u>
<u>See attached list and consent statements</u>		

Senior Residence Special Permit - Application

Page A 2

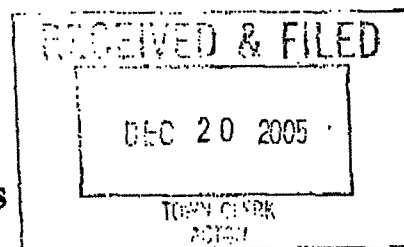
PLACES Project #34

Woodlands at Laurel Hill,
Special Permit Application – Senior Residence:
□ Copies of Issued Permits

Woodlands at Laurel Hill,

Special Permit Application – Senior Residence:

- Copies of Issued Permits- Comprehensive Permit

DECISION**TOWN OF ACTON, MASSACHUSETTS
ZONING BOARD OF APPEALS
DECISION UPON APPLICATION OF
WOODLANDS AT LAUREL HILL, LLC
FOR A COMPREHENSIVE PERMIT****I. APPLICANT AND PUBLIC HEARING**

1. Pursuant to notice duly mailed, published and posted, a public hearing was held by the Acton Zoning Board of Appeals (the "ZBA") at the Acton Town Hall, 472 Main Street, Acton, Massachusetts, on November 4, 2004, commencing at 7:30 p.m., upon the application of Woodlands at Laurel Hill, LLC, a Massachusetts limited liability company ("Woodlands" or the "Applicant") for a comprehensive permit under Massachusetts General Laws Chapter 40B, §§ 20-23 ("the Act") and under Town of Acton Zoning By-Laws, to build low or moderate income housing in a development of 296-unit multi-family rental housing development all as more particularly described on the Plans referenced in this Decision below (the "Project") on approximately 35 acres of land located off Nagog Park Road and Westford Lane in Acton and identified as Parcels 2, 6, 7, 9, 11, 18 and 42 on Acton Assessor's Map B-5, and Highridge Way so-called on Assessor's Map B-5 (the "Site"), with off-site improvements proposed as affecting Parcels 1, 2, 2-1, 2-1, 2-3, 2-3, and 6-1 on Acton Assessor's Map B-4.¹ The ZBA conducted a view of the premises on December 4, 2004, and held continued public hearings on the original application on December 2, 2004, and February 9, 2005,

2. On February 9, 2005, the Applicant requested permission to amend the Project in Acton to consist of the original 296-unit multi-family rental housing development plus an additional 64 "for sale" townhouse condominium units on the balance of Parcel 7 on Acton Assessor's Map B-5 (designated as "Lot 4" on the Revised Plans referenced in this Decision below), all as more particularly described, amended and updated on the Plans, the Revised Plans, the Engineering Drawings, and the Architectural Plans referenced in this Decision below (collectively the "Revised Project").²

3. On or about March 8, 2005, the Applicant submitted its formal amended application for the Revised Project. The ZBA published and posted appropriate public notice of the amended application, and the Applicant sent certified mail notices to interested parties.

¹ The Project also included 84 proposed residential rental units in Westford pursuant to a proposed comprehensive permit from the Westford Board of Appeals.

² The Revised Project also includes 84 proposed residential rental units in Westford and 2 new single family homes in Westford pursuant to an amended application for a proposed comprehensive permit from the Westford Board of Appeals.

4. The ZBA considered the amended application during public hearings on March 30, 2005, April 27, 2005, May 11, 2005, and June 1, 2005.

5. At the public hearings on June 29, 2005, and in more detail on July 21, 2005, the Applicant introduced the following two alternative site plans for the Revised Project, for consideration by the ZBA:

- (a) A plan dated 7-11-05, labeled "revised/updated" intended to incorporate (i) responses to comments from Town boards and Town agents and (ii) adjustments by the applicant ("Option 1"); and
- (b) A plan labeled "Proponent's Preferred Plan" dated 7-11-05, which incorporated all of the changes outlined in Option 1 above but which also consolidated the 4 apartment buildings, club house and amenities at the entrance of the project into one proposed building of 86 units served by 2 elevators to be 100% ADA accessible ("Option 2").

6. On or about July 29, 2005, the Applicant submitted its formal amended and updated application for the Revised Project, depicting Option 1 and Option 2, above.

7. After receiving comments from various Town boards and officials at the continued public hearing on September 20, 2005, the ZBA assented to the Applicant proceeding to detailed final engineering drawings for Option 2, to be submitted to the Board on October 19, 2005.

8. The Applicant submitted detailed engineering drawings for the Option 2 Revised Project on October 19, 2005, as more particularly referenced in this Decision below (the "Engineering Drawings").

9. The Board held further public hearings on October 20, 2005, and November 21, 2005, to receive input on proposed waivers and proposed conditions that may be imposed on a decision of approval, in the event the Board was to issue such a decision.

10. After receiving comments from various Town boards and officials, the ZBA considered the Engineering Drawings and related comments during a public hearing on November 30, 2005.

11. The ZBA closed the public hearing on December 19, 2005, and began its deliberations.

12. The ZBA has issued this Decision within the time frame specified in Massachusetts General Laws, Chapter 40B, §§ 20-23.

13. All sessions of the public hearing were transcribed by a court reporter, or detailed minutes were taken, and the transcripts, minutes and exhibits are available for public inspection in the ZBA's offices. A list of the Transcripts and Hearing Exhibits is contained in the record.

14. Throughout the public hearing the Applicant was represented by Attorney Louis Levine of Acton.

15. Sitting for the ZBA and present throughout the public hearings were Chairman Jonathan Wagner, Members Kenneth Kozik and David Black, and associate member Cara Voutselas.

16. Voting on this Decision were the three signatories to this Decision, below.

II. NATURE OF THIS PROCEEDING

17. In conducting its hearings in this matter, the ZBA is guided by the decision of the Supreme Judicial Court in Dennis Housing Corp. v. Board of Appeals of Dennis, 439 Mass. 71, 76-77 (2003) (citations omitted), that a qualified developer proposing to build low or moderate income housing:

may submit to the zoning board of appeals "a single application to build such housing in lieu of separate applications to the applicable local boards." The zoning board is then to notify those "local boards" for their "recommendations" on the proposal; the zoning board may "request the appearance" of representatives of those "local boards" at the public hearing as may be "necessary or helpful" to the decision on the proposal; and the zoning board may "take into consideration the recommendations of the local boards" when making its decision. The zoning board then has "the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application," ... and, in some circumstances, has the power to override requirements or restrictions that would normally be imposed by those local boards. If the zoning board denies the application for comprehensive permit, or approves it only on conditions that make the project "uneconomic," the applicant may appeal to the housing appeals committee ... which also has the power to override local regulations and direct the issuance of a comprehensive permit."²

² The Housing Appeals Committee's decision itself is further reviewable by the Superior Court in accordance with the State Administrative Procedure Act, G.L. c. 30A.

18. Any person aggrieved by the issuance of a comprehensive permit has a right of appeal to the Superior Court under Section 17 of the Zoning Act (Chapter 40A).

III. GOVERNING LAW

19. The law governing this case is The Low and Moderate Income Housing Act, Massachusetts General Laws, Chapter 40B, §§ 20-23 (the "Act"), and the regulations promulgated by the Department of Housing and Community Development ("DHCD") Housing Appeals Committee, 760 CMR 30.00ff and 31.00ff (the "Regulations").

20. The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass. 339 (1973). The purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total land area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year. See, e.g., Arbor Hill Holdings Limited Partnership v Weymouth Board of Appeals, Housing Appeals Committee No. 02-09 (9/24/03).

21. Acton does not presently meet any of these criteria. That being the case, Acton's Zoning Bylaw and its other local bylaws and regulations which ordinarily govern development in the Town may be overridden by a comprehensive permit issued by this Board upon a proper showing by the Applicant. Hanover v. Housing Appeals Committee, supra.

IV. GOVERNING PRINCIPLE

22. Under the Act and the Regulations, in deciding this application, the ZBA must balance the regional need for low and moderate income housing against any local objection to the proposed plan. Board of Appeals of Hanover v. Housing Appeals Committee 363 Mass 339 (1973). If a comprehensive permit is granted with conditions, those conditions must not render the project uneconomic.

V. JURISDICTIONAL ELEMENTS (760 CMR 31.01(1) and 31.02(1))

23. Pursuant to the Act and the Regulations, an applicant for a comprehensive permit must fulfill three initial jurisdictional requirements:

- a. The applicant must be a public agency, a non-profit organization, or a limited dividend organization;

b. The project must be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and

c. The applicant must "control the site." 760 CMR 31.01(1).

24. As discussed more fully below, the ZBA finds that the Applicant has provided sufficient information to meet these jurisdictional requirements.

(a) Status of Applicant

25. Pursuant to the Regulations, an applicant for a comprehensive permit must be a public agency, a non-profit organization, or a limited dividend organization. 760 CMR 31.01(1)(a). The Applicant proposes to satisfy this criterion by means of a limited dividend organization which agrees to legally bind itself to limit the profit it derives from a comprehensive permit development. As the proposed Revised Project encompasses both a "rental" component and a "for sale" component, this criterion will be satisfied through the execution of one or more Regulatory Agreements between the subsidizing agency and the Applicant. The Regulatory Agreement for the "rental" portion of the Revised Project at a minimum shall stipulate that the Applicant's profit, cash flow and distribution of return to the Applicant or to the members, partners, shareholders, or other owners of the Applicant will be limited as set forth in the applicable equity and limited dividend policy of the subsidizing agency, and shall provide mechanisms to enforce this requirement. The Regulatory Agreement for the "for sale" portion of the Revised Project at a minimum shall stipulate that the Applicant's profit from the development shall be limited to 20% of the development costs, and shall provide mechanisms to enforce this requirement.

26. In the application submitted to the ZBA, the Applicant is identified as Woodlands at Laurel Hill, LLC, a Massachusetts limited liability company, which has a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742, and which has managers David E. Hale and George A. Robb (Hearing Exhibit 3, Tab 22). The corporate records at the office of the Secretary of the Commonwealth reflect that Woodlands at Laurel Hill, LLC, acts by and through the following persons authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property: David E. Hale, Mark B. Brooks, John B. Amaral, and George A. Robb.

27. Accordingly, for purposes of this application, the ZBA considers Woodlands at Laurel Hill, LLC to be the Applicant under this application. To ensure that this entity complies with the jurisdictional requirements of the Regulations and will execute a suitable Regulatory Agreement or Agreements pursuant to this Comprehensive Permit, the ZBA has incorporated conditions below designed to limit the profit which the Applicant derives from this Comprehensive Permit development and to suitably monitor and enforce that limitation. The required Regulatory Agreement(s) and other transactional documents required by this Decision shall be executed by all persons duly authorized and necessary to bind Woodlands at Laurel Hill, LLC to the terms thereof.

(b) Public Subsidy Requirement

28. A housing development being proposed under a comprehensive permit application must be subsidized under a low and moderate income housing subsidy program. Here, the Applicant has submitted both an initial project eligibility letter, dated September 23, 2004, and a supplemental project eligibility letter for Lot 4, dated July 14, 2005, from Massachusetts Development Finance Agency ("MassDevelopment") (Hearing Exhibits 3 (Tab 13) and 131), a public finance agency that provides below-market financing for the development of affordable housing across the Commonwealth.

29. The ZBA finds that, taken together, these project eligibility letters substantially comply with the project subsidy requirement set forth in the Regulations, 760 CMR 31.01(2).

(c) Site Control Issues

30. To be eligible to obtain a comprehensive permit under Chapter 40B, an applicant must demonstrate that it holds legal title to the property that is the subject of the application, or that it otherwise has a sufficient legal right to acquire title to the property, such as under a purchase and sale agreement.

31. Here, the Applicant has presented evidence that Recreation Realty Trust LLC ("RRT") and its principals have assembled the following Deeds and Purchase and Sale Agreements (the "RRT Agreements") to purchase various real properties in Acton and Westford which, taken together, comprise all of the land and real property interests that are the subject of the comprehensive permit applications for the Revised Project in Acton and Westford (the "Property") (Hearing Exhibits 3 (Tab 22), 22, 183, 188, 189, and 190):

THE WOODLANDS - TITLE INFORMATION (AS OF 11-22-05)

ORIGINAL OWNER	ADDRESS	CURRENT OWNER	LEGAL DESCRIPTION	EVIDENCE OF CONTROL
Nagog Development	80-82 Nagog Park	RRT, LLC	Book 44723, Page 420	(A) Deed
Lefivrc	18 Durkee Lane (Westford)	Brooks, Amaral, Hale, Robb	Book 19190, Page 55	(B) Deed (C) P&S to RRT
Cicccone	5 Durkee Lane (Westford)	Cicccone	Book 4754, Page 42	(D) P&S to RRT
Welch	Land in Acton & Westford	Welch	Book 2330, Page 596	(E) P&S to RRT
LaDuke	12 Durkee Lane (Acton & Westford)	LaDuke	(Acton) Book 22503, Page 329 (Westford) Book 3525, Page 299	(F) P&S to RRT
Lukas	24 Durkee Lane	Brooks,	(Acton) Book 19584, Page	(G) P&S to RRT

ORIGINAL OWNER	ADDRESS	CURRENT OWNER	LEGAL DESCRIPTION	EVIDENCE OF CONTROL
	(Acton & Westford)	Amaral, Hale, Robb	283 (Westford) Book 19584, Page 235 and Cert of Title # 35619	
Black	18 Durkee Lane (Westford)	Brooks, Amaral, Hale, Robb	Book 19190, Page 001	(H) Deed (I) P&S to RRT

32. In turn, RRT as Seller has executed Purchase and Sale Agreements with the Applicant Woodlands at Laurel Hill, LLC, as Buyer for the foregoing Property (Hearing Exhibits 191) (the "Woodlands Agreement").

33. The RRT Agreements and the Woodlands Agreement each allow an extended closing date that is after the date of this Decision. During the public hearings, the Applicant provided evidence that RRT and the Applicant have, respectively, satisfied any conditions precedent for the extended closing dates to be in effect.

34. Accordingly, the ZBA finds that, as of the date of issuance of this Comprehensive Permit, the Applicant has demonstrated that it has a sufficient legal right to acquire title to the Property under the Woodlands Agreements.

VI. APPLICATION REQUIREMENTS

35. In addition to the above jurisdictional requirements, an applicant for a comprehensive permit must comply with both the DHCD and the ZBA Regulations governing the content of a comprehensive permit application. Under these regulations, an application must contain certain documentation and plans. See, 760 CMR 31.02(a)-(h), and ZBA Local Regulations.

36. The Applicant initially requested waivers from a number of application requirements in the DHCD and/or ZBA Regulations. During the course of the public hearings, the Applicant submitted a variety of additional information as required by the ZBA. As a result, the list of requested waivers from the application requirements in the ZBA Regulations has been greatly reduced.

37. The ZBA hereby grants waivers from the application requirements in the ZBA Regulations as and to the extent specified in Exhibit A hereto.

38. If and to the extent the application materials as amended and supplemented at the hearings remain deficient and/or a requested waiver has not been granted, any such deficiencies are addressed by the conditions below.

VII. SUMMARY OF DECISION

39. For the reasons stated below, the ZBA approves with the waivers and conditions set forth below the amended application of Woodlands at Laurel Hill, LLC, for a comprehensive permit for the Acton portion of the Revised Project consisting of a 296-unit multi-family rental housing development plus an additional 64 "for sale" townhouse condominium units under the Act as set forth on and in accordance with the Final Approved Plans identified below.

VIII. THE PROJECT

40. On or about October 7, 2004, the Applicant filed applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton Zoning Board of Appeals (the "Acton ZBA") and the Westford Zoning Board of Appeals (the "Westford ZBA") for a total of 374 residential rental units (296 in Acton and 78 in Westford), on approximately 74 acres of land located off Nagog Park, a private way within the Town of Acton (the "Project"), as depicted on Plans prepared by Places Site Consultants, Inc. ("Places") dated October 7, 2004, entitled "The Woodlands at Laurel Hill" and by the Martin Architectural Group ("Martin") dated August 5 and 18, 2004, entitled "Woodlands at Laurel Hill" (the "Original Plans").

41. On or about March 8, 2005, the Applicant amended its applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, with the Acton ZBA and the Westford ZBA for a total of 380 residential rental units (296 in Acton and 84 in Westford) and 64 "for sale" townhouse condominium units in Acton. The 64 unit townhouse portion of the Revised Project is depicted on Plans prepared by Places Site Consultants, Inc. ("Places") dated March 8, 2005, entitled "The Woodlands at Laurel Hill" and by the Maguel Architectural Group ("Maguel") dated March 2005, entitled "Woodlands at Laurel Hill" (collectively the "Townhouse Plans"). The Maguel Architectural Floor Plan and Building Elevations, Sheets A-1 to A-3 dated March 2005 are referred to herein as the "Condominium Component Architectural Plans" (Hearing Exhibit 195).

42. The Original Plans plus the Townhouse Plans are collectively referred to in this Decision as the "Revised Plans."

43. On or about July 29, 2005, the Applicant further amended the Revised Plans for the Revised Project, to depict Option 1 and Option 2, as follows:

- (a) A plan dated 7-11-05, labeled "revised/updated" intended to incorporate (i) responses to comments from Town boards and Town agents and (ii) adjustments by the applicant ("Option 1"); and
- (b) A plan labeled "Proponent's Preferred Plan" dated 7-11-05, which incorporated all of the changes outlined in (a) above but which also

consolidated the 4 apartment buildings, club house and amenities at the entrance of the project into one proposed building of 86 units served by 2 elevators to be 100% ADA accessible ("Option 2").

44. On October 19, 2005, the Applicant submitted to the ZBA the following detailed engineering drawings for the Revised Project based on the Proponent's Preferred Plan (Option 2), prepared by Places Site Consultants, Inc. ("Places") entitled "The Woodlands at Laurel Hill," with inserted plans from Stamski & McNary, Inc. ("Stamski"), Hawk Design, Inc. ("Hawk"), and Rizzo Associates ("Rizzo"), and by Places entitled "Roadway and Utility Improvements, Great Road, Westford Lane, & Durkee Lane" (collectively the "Engineering Drawings") (Hearing Exhibits 154 and 155):³

FIRM	SHEET	TITLE	REVISION
Title	Title	The Woodlands at Laurel Hill	October 19, 2005
Places	Note-1	General Notes, Legend & Abbreviations	October 19, 2005
Places	100-SP-1	Master Plan	October 19, 2005
Places	100-A	Key to Parcels Affected by Project	October 19, 2005
Places	100-EC1	Existing Conditions and Demolition Plan	October 19, 2005
Stamski	SM-3221	Record Plan, Sheets 1-6	October 19, 2005
Places	100-SP-1	Site Plan Key Sheet SP-1	October 19, 2005
Places	100-SP-2	Site Plan Sheet SP-2	October 19, 2005
Places	100-SP-3	Site Plan Sheet SP-3	October 19, 2005
Places	100-SP-4	Site Plan Sheet SP-4	October 19, 2005
Places	100-SP-5	Site Plan Sheet SP-5	October 19, 2005
Places	100-GD-1	Grading & Drainage Plan GD-1	October 19, 2005
Places	100-GD-2	Grading & Drainage Plan GD-2	October 19, 2005
Places	100-GD-3	Grading & Drainage Plan GD-3	October 19, 2005
Places	100-GD-4	Grading & Drainage Plan GD-4	October 19, 2005
Places	100-GD-5	Drainage Schedule	October 19, 2005
Places	100-PP-1	Laurel Hill Drive Plan & Profile 0 to 11+0	October 2005
Places	100-PP-2	Laurel Hill Drive Plan & Profile 11+0 to 21+0	October 2005
Places	100-PP-3	Laurel Hill Drive Plan & Profile 21+0 to END	October 2005
Places	100-PP-4	Laurel Hill Drive Terminus Plan	October 2005
Places	100-U-1	Utilities Improvements Plan U-1	October 19, 2005
Places	100-U-2	Utilities Improvements Plan U-2	October 19, 2005
Places	100-U-3	Utilities Improvements Plan U-3	October 19, 2005
Places	100-U-4	Utilities Improvements Plan U-4	October 19, 2005
Places	109-LS-1	Sewer Lift Station Construction Details	October 19, 2005
Places	109-LS-2	Sewer Lift Station Construction Details	October 19, 2005

³ Sheets 100-GD-1 through 100-GD-4 were revised on November 15, 2005, to add wetland replication notes (Hearing Exhibit 193). Sheet L-6 was revised on November 4, 2005, to add Sign C (Hearing Exhibit 194).

FIRM	SHEET	TITLE	REVISION
Places	109-LS-3	Sewer Lift Station Construction Details	October 19, 2005
Places	130-D-1	Construction Details & Site Improvements	October 19, 2005
Places	130-D-2	Sewer Details	October 19, 2005
Places	130-D-3	Drainage Details	October 19, 2005
Places	130-D-4	Drainage Details	October 19, 2005
Places	130-D-5	Construction Details & Site Improvements	October 19, 2005
Places	130-D-6	Construction Details & Site Improvements	October 19, 2005
Places	130-ES-1	Erosion and Sedimentation Control Plan	October 19, 2005
Hawk	L-1	Landscape Plan L-1	October 19, 2005
Hawk	L-2	Landscape Plan L-2	October 19, 2005
Hawk	L-3	Landscape Plan L-3	October 19, 2005
Hawk	L-4	Landscape Plan L-4	October 19, 2005
Hawk	L-5	Typical Buildings Landscape Plans	October 19, 2005
Hawk	L-6	Conceptual Signage Plan	October 19, 2005
Hawk	L-7	Irrigation Area Plan	October 19, 2005
Hawk	D-1	Details and Notes	October 19, 2005
Rizzo	W7	Yard Piping Plan	10/17/05
Rizzo	W17	Leachfield Layout & Sections	10/17/05
Places	Title	Roadway and Utility Improvements Great Road, Westford Lane & Durkee Lane	October 19, 2005
Places	Notes - 1	General Notes, Legend & Abbreviations	October 19, 2005
Places	129-EX-1.1	Westford Lane Existing Conditions and Demolition Plan; Plan View 1.1 and Plan View 1.2	October 19, 2005
Places	129-EX-1.2	Durkee Lane Existing Conditions and Demolition Plan; Plan View 2.1	October 19, 2005
Places	129-RD-1.1	Utility Improvements Great Road to Station 0+00	October 19, 2005
Places	129-RD-1.2	Westford Lane Utility Improvements 0+00 to 11+00	October 19, 2005
Places	129-RD-1.3	Westford/Durkee Lane Road & Utility Improvement Plan Station 11+00 to 22+00	October 19, 2005
Places	129-RD-1.4	Durkee Lane Road & Utility Improvement Plan Station 22+00 to 30+50	October 19, 2005
Places	129-D-1	Drainage Details	October 19, 2005
Places	129-D-2	Construction & Utility Details	October 19, 2005
Places	129-D-3	Construction & Utility Details	October 19, 2005
Places	129-D-4	Utility Details	October 19, 2005
Places	129-ES-1	Erosion and Sedimentation Control Plan	October 19, 2005

45. On or about November 11, 2005, the Applicant submitted to the ZBA the following Architectural Plans for the Rental Component of the Revised Project prepared by Niles Bolton Associates, Inc., entitled "The Woodlands at Laurel Hills, Acton, Massachusetts," (the "Rental Component Architectural Plans") (Hearing Exhibit No. 184):

FIRM	SHEET	TITLE	REVISION
Niles	A0.0	The Woodlands at Laurel Hills	November 11, 2005
Niles	A2.1	Main Building Terrace Floor Building Plan	November 11, 2005
Niles	A2.2	Main Building First Floor Building Plan	November 11, 2005
Niles	12.3	Main Building Second Floor Building Plan	November 11, 2005
Niles	A2.4	Main Building Third Floor Building Plan	November 11, 2005
Niles	A2.5	Main Building Loft Level Building Plan	November 11, 2005
Niles	A2.6	Building Type 105S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.7	Building Type 105S Second Floor Building Plan	November 11, 2005
Niles	A2.8	Building type 105S Third Floor Building Plan	November 11, 2005
Niles	A2.9	Building Type 105S Loft Level & Roof Plan	November 11, 2005
Niles	A2.10	Building Type 140S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.11	Building Type 140S Second Floor Building Plan	November 11, 2005
Niles	A2.12	Building Type 140S Third Floor Building Plan	November 11, 2005
Niles	A2.13	Building Type 140S Loft Level & Roof Plan	November 11, 2005
Niles	A2.14	Building Type 170S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.15	Building Type 170S Second Floor Building Plan	November 11, 2005
Niles	A2.16	Building Type 170S Third Floor Building Plan	November 11, 2005
Niles	A2.17	Building Type 170S Loft Level & Roof Plan	November 11, 2005
Niles	A2.18	Building Type 190S Terrace & First Floor Building Plans	November 11, 2005
Niles	A2.19	Building Type 190S Second Floor Building Plan	November 11, 2005
Niles	A2.20	Building Type 190S Third Floor Building Plan	November 11, 2005
Niles	A2.21	Building Type 190S Loft Level & Roof	November 11, 2005

FIRM	SHEET	TITLE	REVISION
		Plan	
Niles	A4.1	Main Building Elevations	November 11, 2005
Niles	A4.2	Main Building Elevations	November 11, 2005
Niles	A4.3	Building Type 105S Front, Rear & Side Elevations	November 11, 2005
Niles	A4.4	Building Type 140S Front, Rear & Side Elevations	November 11, 2005
Niles	A4.5	Building Type 170S Front, Rear & Side Elevations	November 11, 2005
Niles	A4.6	Building Type 190S Front, Rear & Side Elevations	November 11, 2005
Niles	A9.1	4-Bay Garage Plans & Elevations	November 11, 2005
Niles	A9.2	6-Bay & 6-Bay Accessible Garages Plans & Elevations	November 11, 2005
Niles	A9.3	Recycle Center Floor Plan	November 11, 2005
Niles	A9.4	Recycle Center Elevations	November 11, 2005
Niles	A9.5	Maintenance Building Floor Plan & Roof Plan	November 11, 2005
Niles	A9.6	Maintenance Building Elevations	November 11, 2005

46. As most recently amended by and shown on the Engineering Drawings and the Rental Component Architectural Plans, the "rental" portion of the Revised Project in Acton consists of one main residential building of 86 rental units with a club house, pool, community center and associated amenities, and seven other residential buildings housing a total of 210 rental units, for an overall total of 296 residential rental units, parking, and associated access and egress drives, infrastructure, and improvements, all as shown on the Engineering Drawings and the Rental Component Architectural Plans (the "Rental Component").

47. As most recently amended by and shown on the Engineering Drawings and the Condominium Component Architectural Plans, the "for sale" portion of the Revised Project consists of eighteen residential townhouse buildings housing two, three or five units each, parking, and associated infrastructure, all as shown on the Engineering Drawings and the Condominium Component Architectural Plans (the "Condominium Component").

48. Each of the 296 rental units in the Revised Project will have one or two bedrooms. Each of the 64 townhouse condominium units in the Revised Project will have two bedrooms.

49. The Acton portion of the Site at issue in the present case is located within an Office Park 1 and 2 Districts and a Residence 10/8 Zoning District, and a portion of the Site is located within an Affordable Housing Overlay Subdistrict "A."

IX. CONCLUSORY FINDINGS

50. Based on the evidence presented by the Applicant, local boards and officials, various consultants, and interested parties at the public hearings, the ZBA finds as follows:

- a. Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum criteria, after which the Town would have its normal powers to apply its own bylaws, requirements and regulations to this application.
- b. The proposed Revised Project (as depicted on the Engineering Drawings) will, when conforming to the conditions set forth in this Decision, adequately provide for traffic circulation, storm water drainage, sewerage, and water, without an undue burden on the occupants of the Revised Project or on the surrounding neighborhood or the Town.
- c. The proposed Revised Project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the Revised Project, the neighborhood, or the Town.
- d. The proposed Revised Project on the Site is supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this Decision, (ii) would represent a reasonable accommodation of the regional need for low and moderate income housing, and (iv) would be consistent with local needs within the meaning of Massachusetts General Laws, Chapter 40B, Section 20.

X. WAIVERS FROM LOCAL BYLAWS AND REGULATIONS

51. The Applicant initially requested waivers from a number of local bylaws and regulations. During the course of the public hearings, the Applicant revised its plans in a number of specific and material respects in response to comments by the ZBA, various Town boards and officials and the public. As a result, the list of requested waivers from local bylaws and regulations has been greatly reduced.

52. The ZBA finds as follows with respect to the remaining requested waivers from local bylaws and regulations with respect to the Revised Project as shown on the Final Approved Plans:

A. Acton Zoning Bylaw

53. The ZBA grants the waivers from the Acton Zoning Bylaw specified on Exhibit B hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

B. Acton Wetlands Bylaw

54. The ZBA grants the waivers from the Acton Wetlands Bylaw specified on Exhibit C hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

C. Acton Board of Health Regulations

55. The ZBA grants the waivers from the Acton Board of Health Regulations specified on Exhibit D hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

D. Acton Subdivision Regulations

56. The ZBA grants the following waivers from the Acton Subdivision Regulations specified on Exhibit E hereto, subject to the terms and conditions set forth in this Decision, for the Revised Project as shown on the Final Approved Plans.

E. Waivers Not Listed

57. By granting the waivers from local bylaws and regulations listed on Exhibits B-E, it is the intention of this Comprehensive Permit to permit construction of the Revised Project as shown on the Final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Building Commissioner determines that any additional waiver from local zoning, wetlands, health or subdivision regulations is necessary to permit construction to proceed as shown on the Final Approved Plans, the Building Commissioner shall proceed as follows: (a) any matter of a *de minimis* nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom. If a matter is shown on the Final Approved Plans, it shall be deemed *de minimis* unless the matter would result in an adverse impact on public health, safety, welfare or the environment.

XI. CONDITIONS ATTACHED TO COMPREHENSIVE PERMIT

58. The Revised Project represents a significant development in the Town of Acton and the abutting Town of Westford. It consists of hundreds of new residential units and associated infrastructure and improvements. Given the size, complexity and location of the Revised Project, the ZBA finds that a number of specific and material conditions are required to mitigate potentially adverse effects from the Revised Project on the Town of Acton, residents of the Revised Project, and the public health, safety, welfare and the environment. As conditioned below, the ZBA finds that the Revised Project's potential adverse effects will be suitably mitigated.

59. Accordingly, the ZBA grants the Applicant's request for a comprehensive permit for the Revised Project in Acton consisting of a 296-unit multi-family rental housing development plus an additional 64 "for sale" townhouse condominium units in accordance with the Final Approved Plans on the Site under the Chapter 40B, subject to each and every one of the following conditions:

Definitions

60. As used in these conditions, the term:

- "Rental Component" shall refer to the rental portion of the Revised Project in Acton consisting of (a) one main residential building of 86 rental units with a club house, pool, community center and associated amenities, and seven other residential buildings housing a total of 210 rental units, for an overall total of 296 residential rental units, parking, and associated access and egress drives, infrastructure, landscaping, facilities, amenities, and improvements, all as shown on the Final Approved Plans (the "Rental Component").
- "Condominium Component" shall refer to the for sale portion of the Revised Project in Acton consisting of a total of 64 residential townhouse units in eighteen townhouse residential buildings housing two, three or five units each, together with parking, access and egress drives, and associated infrastructure, landscaping, facilities, amenities, and improvements, all as shown on the Final Approved Plans.
- "Both Components" shall refer to the Rental Component and the Condominium Component.
- "Final Approved Plans" shall refer to the final set of Revised Plans, Engineering Drawings, and Architectural Plans showing the Rental Component and the Condominium Component of the Revised Project, updated in accordance with this Decision, signed and stamped by the Design Engineer, and endorsed by the ZBA in accordance with Condition A.1 below.
- "Revised Project" shall refer to the proposed project consisting of the Rental Component and the Condominium Component shown on the Final Approved Plans.
- "Design Engineer" shall refer to the registered professional engineer or engineers and the registered land surveyor who stamped the Final Approved Plans, or, in the event any of them cease to serve the Applicant with respect to the Revised Project, their permitted successors as approved by the ZBA.

A. General Conditions

- A.1 Prior to commencement of any construction concerning any portion of the Revised Project (whether pursuant to a building permit or otherwise), unless extended by the Building Commissioner for good cause shown the Applicant shall submit to the Building Commissioner a final set of Engineering Drawings and Architectural Plans showing the Rental Component and the Condominium Component of the Revised Project, which shall be identical to Hearing Exhibits 154, 155, 184 and 195 except that they shall be updated in accordance with the requirements of this Decision. Along with this final set of Engineering Drawings and Architectural Plans, the Applicant shall submit a list, prepared by the Design Engineer, of the specific changes made to Hearing Exhibits 154, 155, 184 and 195 to conform the requirements of this Decision. The final set of Engineering Drawings and the list of changes shall be signed and stamped by the Design Engineer. The Building Commissioner shall review the final set of Engineering Drawings and Architectural Plans and the list of changes to ensure that they are consistent with and in conformity with this Decision. Upon the Building Commissioner so finding, the ZBA shall endorse the final set of Engineering Drawings and Architectural Plans which shall thereupon constitute the "Final Approved Plans" under this Decision.
- A.2 Without limitation, when updating the Final Approved Plans in accordance with condition A.1, the Applicant shall make all of the changes to the Engineering Drawings as recommended by the Engineering Department in its Inter-Departmental Communication to the ZBA dated December 7, 2005, summarizing the consensus between the Town Engineer and the Applicant's Engineer with respect to engineering issues (Hearing Exhibit 186), and as required by this Comprehensive Permit.
- A.3 In the event the Building Commissioner determines that the Applicant's construction drawings submitted with its building permit application(s) materially deviate from the Final Approved Plans in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Comprehensive Permit Decision, the Building Commissioner shall so notify the Applicant of the specific deviations, and the Applicant shall either bring the construction drawings into conformity with this Decision or seek modification of this decision in accordance with 760 CMR 31.03. In the event of a disagreement between the Building Commissioner and the Applicant with respect thereto, they shall notify the ZBA which shall thereupon determine whether the building permit construction drawings conform to this Decision. Upon finding that the building permit construction drawings (with any necessary revisions) do conform to this Decision, the ZBA shall endorse those construction drawings if so requested by the Applicant.

- A.4 This Decision, Record Plan, Sheets 1-6, prepared by Stamski & McNary, Inc., of the Final Approved Plans (the endorsed perimeter lot conveyancing plans), and the Memorandum of Agreement dated March, 2005, and all amendments thereto, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton, shall be (a) recorded by the Applicant at the Middlesex South District Registry of Deeds and filed by the Applicant with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, (b) recorded by the Applicant at the Middlesex North District Registry of Deeds and filed by the Applicant with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. This Decision shall become effective upon such recording and filing, as applicable. Official proof of recording and filing of each of these documents, as applicable, shall be forwarded to the Building Commissioner prior to issuance of a building permit or to the start of construction. If necessary for purposes of such recording and filing, the Acton Planning Board or the Town Planner shall ministerially endorse Record Plan, Sheets 1-6 of the Final Approved Plans for recordation purposes only.
- A.5 The Applicant shall comply with all local rules and regulations of the Town of Acton and its boards and commissions unless waived herein or as otherwise addressed in these conditions.
- A.6 Except as may be expressly waived or defined herein, the Applicant shall pay to the Town of Acton all fees required by the Town of Acton imposed generally in respect of construction projects including all required fees for building permits and inspections.
- A.7 The Applicant shall copy the Building Commissioner on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Revised Project.
- A.8 The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner.
- A.9 The Applicant shall maintain a copy of the endorsed Final Approved Plans and this Decision at the Site during construction.

- A.10 If, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting, the Applicant shall obtain temporary easements or other written permission from any abutting property owner.
- A.11 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Revised Project and the use of the land does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to this Comprehensive Permit Decision shall be incorporated in the every deed conveying all or any portion of the Rental Component of the Site, and in the Master Deed and in each Unit Deed for the Condominium Component of the Revised Project.
- A.12 This Decision permits the construction, use, and occupancy of (a) 296 rental units in the Revised Project each of which will have one or two bedrooms, (b) 64 townhouse condominium units in the Revised Project each of will have two bedrooms, and (c) associated facilities and improvements as depicted on the Final Approved Plans to be submitted and endorsed in accordance with this Decision. The construction and use of the Site shall be in conformity with this Decision and the Final Approved Plans, and there shall be no further subdivision of the Site, or the creation of additional housing units or any other structures or infrastructure on the Site except that which is shown on the Final Approved Plans, without further approval of the ZBA in the form of an amendment to this Decision. The ZBA acknowledges that, for purposes of financing the Revised Project, it may be necessary or convenient, subject to further proceedings before the ZBA, to allow further subdivision of the Revised Project within the site by a suitable amendment of this Comprehensive Permit in the future.

B. Submission Requirements

B.1 Pre-Construction Submissions for Rental Component:

Before the Applicant begins any construction of the buildings and units in the Rental Component of the Revised Project, the Applicant shall have:

- a. Delivered to the Building Commissioner from a public or private financing institution, or institutions, a written commitment to provide the major portion of the financing required for the Rental Component of the Revised Project as approved by this Decision, or other reasonable evidence of suitable funding;

- b. Delivered to the Building Commissioner the organization papers of the non-profit or limited dividend organization which will construct the Rental Component of the Revised Project and a certified copy of any determination by the Applicant's Subsidizing Agency (if required thereby) that the organization qualifies as a non-profit or limited dividend organization within the meaning of the Act and what the limitation on dividend is;
- c. Delivered to the Building Commissioner a certified copy of the Regulatory Agreement and the Monitoring Services Agreement for the Rental Component of the Revised Project;
- d. Obtained and filed with the Building Commissioner a copy of all federal, state and local permits and approvals required for the Rental Component of the Revised Project including, without limitation, (a) the Comprehensive Permit issued by the Westford Board of Appeals for the portion of the Revised Project in Westford, (b) the Certificate of the Secretary of Environmental Affairs approving the Revised Project, (c) the Groundwater Discharge Permit issued for the Revised Project's sewage treatment plant, and (d) any other state or local permits required for the Revised Project's sewage treatment plant in Westford to receive, treat and dispose of effluent from the Acton portion of the Revised Project.
- e. Obtained all necessary building, electrical, plumbing and associated permit(s) for the proposed work on the Rental Component of the Revised Project required by state law.
- f. Delivered to the Building Commissioner a registry-stamped copy of a Conservation Restriction, mutually acceptable to the Applicant and the Acton Conservation Commission, covering the area of the Site in the vicinity of the detention basin shown on the Final Approved Plans to be subject to such a restriction. The terms of this conservation restriction shall be agreed upon by the Applicant and the Conservation Commission during the Commission's review of the Revised Project under the state wetlands protection act. In the event the Applicant and the Conservation Commission do not reach agreement on the terms of this restriction during that process, the Applicant shall forthwith notify the ZBA which shall treat this fact as a project change triggering the procedures in 760 CMR 31.03(3).

B.2 Pre-Construction Submissions for Condominium Component:

Before the Applicant begins any construction of the buildings and units in the Condominium Component of the Revised Project, the Applicant shall have:

- a. Delivered to the Building Commissioner from a public or private financing institution, or institutions, a written commitment to provide the major portion of the financing required for the Condominium Component of the Revised Project as approved by this Decision, or other reasonable evidence of suitable funding;
- b. Delivered to the Building Commissioner the organization papers of the non-profit or limited dividend organization which will construct the Condominium Component of the Revised Project and a certified copy of any determination by the Applicant's Subsidizing Agency (if required thereby) that the organization qualifies as a non-profit or limited dividend organization within the meaning of the Act and what the limitation on dividend is;
- c. Delivered to the Building Commissioner a certified copy of the Regulatory Agreement and the Monitoring Services Agreement for the Condominium Component of the Revised Project;
- d. Obtained and filed with the Building Commissioner a copy of all federal, state and local permits and approvals required for the Condominium Component of the Revised Project including, without limitation, (a) the Comprehensive Permit issued by the Westford Board of Appeals for the portion of the Revised Project in Westford, (b) the Certificate of the Secretary of Environmental Affairs approving the Revised Project, (c) the Groundwater Discharge Permit issued for the Revised Project's sewage treatment plant, and (d) any other state or local permits required for the Revised Project's sewage treatment plant in Westford to receive, treat and dispose of effluent from the Acton portion of the Revised Project.
- e. Obtained all necessary building, electrical, plumbing and associated permit(s) for the proposed work on the Condominium Component of the Revised Project required by state law.
- f. Delivered to the Building Commissioner a registry-stamped copy of a Conservation Restriction, mutually acceptable to the Applicant and the Acton Conservation Commission, covering those areas of the Site shown on the Final Approved Plans to be subject to such a restriction. The terms of this conservation restriction shall be

agreed upon by the Applicant and the Conservation Commission during the Commission's review of the Revised Project under the state wetlands protection act. In the event the Applicant and the Conservation Commission do not reach agreement on the terms of this restriction during that process, the Applicant shall forthwith notify the ZBA which shall treat this fact as a project change triggering the procedures in 760 CMR 31.03(3).

B.3 As Built Plans: Separate "As Built Plans" shall be submitted to the Building Commissioner as follows:

- a. for the Condominium Component of the Revised Project, prior to the occupancy or use of the final building constituting a part of the Condominium Component of the Revised Project, and
- b. for the Rental Component of the Revised Project, prior to the occupancy or use of the final building constituting a part of the Rental Component of the Revised Project.

The "As Built Plans" shall show all binder coat pavement, buildings, drainage structures, and other infrastructure and utilities (excluding landscaping) as they exist on the Site, above and below grade, including appropriate grades and elevations as of the time the plans are required to be submitted under this Condition B.3 (and subject to updating upon final completion of the Revised Project). The "As Built Plans" shall be signed and stamped by the Design Engineer, certifying that the Revised Project in Acton as built conforms and complies with the conditions of this Comprehensive Permit. [The purpose of this provision is to facilitate the Building Inspector's review of the project for compliance with the Comprehensive Permit before the final occupancy permit is issued.] The as-built utilities sheet(s) shall include both plan and profile views showing actual in-ground installation of all utilities for the Revised Project in Acton and Westford, and shall be submitted to the Building Commissioner and the Department of Public Works after completion of construction.

B.4 As Built Plans for Westford Portion of Revised Project: For the Westford portion of the Revised Project, accurate as-built plans shall be submitted to the Acton Building Commissioner for the treatment plant and all utilities and infrastructure serving any portion of the Revised Project in Acton.

C. Site Development Construction Conditions

- C.1** The Applicant shall cause construction drawings to be prepared consistent with this Decision and the Final Approved Plans.

- C.2 The Applicant shall obtain all building permits and occupancy permits that may be required by the State Building Code.
- C.3 The Applicant shall permit ZBA representatives access to the Site to observe and inspect the Site and construction progress until such time as the Revised Project has been completed.
- C.4 The Applicant shall submit a construction and permitting schedule prior to the start of construction and annually thereafter to the Building Commissioner to assist in project status update and review.
- C.5 The Applicant shall forward final architectural plans to the Building Commissioner at the time of applying for building permits. All construction shall be inspected by the Building Commissioner and shall be in compliance with all Massachusetts State Building Code requirements.
- C.6 The Applicant shall provide temporary central mailbox units (CMU) for any project residents during project construction. These CMU's shall be approved as to style and location by the local Postmaster General of the United States Post Office. Post Office authorization shall be forwarded to the Building Commissioner for the record.
- C.7 The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- C.8 Hours - The hours of operation for any construction activities on-site shall be between 7:00 am and 7:00 pm, Monday thru Friday, 8:00 am and 5:00 pm on Saturdays, and no work shall be allowed on-site on Sundays or on Holidays as recognized by the Commonwealth of Massachusetts.
- C.9 Dust - The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation DEP's Dust regulations at 310 CMR 7.09, as amended, as directed by the Building Commissioner or the Town Engineer, even though other work on the project may be suspended as a result thereof. Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.
- C.10 Noise - The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies, including without limitation DEP's Noise regulations at 310 CMR 7.10, as amended, and DEP's DAQC Noise Policy No. 90-001 (2/1/90), as amended. The

Applicant shall cease any excessively loud activities when directed by the Building Commissioner to comply therewith.

- C.11 Vibration - The Applicant shall implement necessary controls to ensure that vibration does not unreasonably extend beyond the subject site and create a nuisance or hazard for property abutters.
- C.12 Traffic - The Applicant shall comply with all construction-related traffic safety conditions set forth in Section E below.
- C.13 Roads - The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways permitting access to residents and emergency vehicles during construction and until the Common Infrastructure Agreements required by this Decision are recorded and/or registered as applicable and the Condominium Association has been legally established for the Condominium Component of the Revised Project.
- C.14 Burial of any stumps or debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.
- C.15 Soil material used as backfill for pipes, roads, and/or structures (i.e. detention basins) shall be certified by the Design Engineer to the Building Commissioner as meeting design specifications.
- C.16 Utilities, including but not necessarily limited to electric, cable, and telephone shall be located underground.
- C.17 Stabilization Requirements - No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- C.18 Construction vehicles shall be parked on the Site, and off Nagog Park and Route 2A-119 at all times.

D. Police, Fire and Emergency Safety Conditions

- D.1 Based on the unique size, type, location, density, and access to the Revised Project, the ZBA imposes the condition that, as mitigation of potential public safety issues associated with the proposed project, the Applicant shall conform to the requirements of the Memorandum of Agreement dated March, 2005, as from time-to-time amended, between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board

of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton. A true copy of that Memorandum of Agreement with all amendments is attached hereto as Exhibit F and incorporated herein by reference.

D.2 Each building in the Revised Project shall be equipped with an approved system of automatic sprinklers in accordance with the provisions of the state building code, 780 CMR 904.7, and G.L. c. 148, s. 26(I), as applicable.

D.3 The Applicant shall include in every lease or other rental agreement for units in the Revised Project located in Acton and Westford the following caveat:

"The Town of Acton and the Town of Westford currently have no Mutual Aid Agreement with respect to the provision of police, fire, ambulance and other emergency services. E-911 calls from units in Westford will be routed to Westford emergency services and those made from units in Acton will be routed to Acton emergency services. Neither Town has the responsibility to provide police, fire, ambulance, nor other emergency response to residential units in the other Town except as may be provided for in the State mutual aid statutes."

This condition shall remain in effect so long as there remains no Mutual Aid Agreement or other Inter-Municipal Agreement in effect with respect to police, fire, ambulance and other emergency services between the Towns of Acton and Westford.

D.4 The Applicant shall use its best efforts to ensure that all providers of telephone landline service to units located in Westford shall route all E-911 calls from units located in Westford to Westford emergency services.

D.5 The Applicant shall obtain approvals from the Acton Engineering Department, Police Chief, and Fire Chief on the street addresses for all buildings and units in the Revised Project. The Applicant shall use its best efforts to work with Town officials in both Acton and Westford to ensure that all buildings and units in the Revised Project in Acton and Westford are assigned unique and unambiguous addresses to avoid any confusion of addresses with other streets having the same or similar names in Acton or Westford.

D.6 Each building and unit in the Revised Project shall be equipped with fire detection systems and shall comply with the applicable state Building Code and Fire Safety Code provisions. The fire detection system for each building and unit in the Revised Project in Acton shall be subject to the

approval of the Acton Fire Chief consistent with his authority under said Codes. (Any fire detection system for buildings and units in the Revised Project in Westford shall be subject to the approval of the Westford Fire Chief consistent with his authority under said Codes.)

- D.7 Each municipal fire alarm street box for the Revised Project in Acton shall be located in an area acceptable to the Acton Fire Chief, where it will be readily accessible but not be susceptible to damage by snow plows in the winter months, and shall be tied to the Acton dispatch system. Each fire alarm master box on the buildings in the Revised Project in Acton shall be located in an area acceptable to the Acton Fire Chief and shall be tied to the Acton dispatch system.
- D.8 Each municipal fire alarm street box for the Revised Project in Westford shall be located in an area acceptable to the Westford Fire Chief, where it will be readily accessible but not be susceptible to damage by snow plows in the winter months, and shall be tied to the Westford dispatch system. Each fire alarm master box on the buildings in the Revised Project in Westford shall be located in an area acceptable to the Westford Fire Chief and shall be tied to the Westford dispatch system.
- D.9 The Applicant shall construct and maintain a locked and gated emergency access on Lot 18 on Assessor's Map B-5 to connect Nagog Park to Nonset Path for use only in the event of emergencies by Acton and/or Westford police, fire, ambulance or other emergency services. The Applicant shall provide appropriate keys or other means of access to Acton and Westford police, fire, ambulance and other emergency services. The design and construction of the emergency access shall be acceptable to the Acton Fire Chief. The Applicant shall provide in its project documents governing infrastructure improvements for the maintenance of this emergency access over time such that it is appropriately passable in the event of an emergency.
- D.10 A licensed blasting professional shall do any necessary blasting on the site after proper pre-blast inspections have been conducted and all required permits have been obtained from the Acton Fire Department. Pursuant to G.L. c. 148, § 19, before the issuance of a permit to use an explosive in the blasting of rock or any other substance at the Site, the applicant for the permit shall file with the Acton Town Clerk a bond running to the Town, with sureties approved by the treasurer of the Town, in the penal sum as the officer granting the permit shall determine in accordance with § 19 to be necessary in order to cover the risk of damage that might ensue from the blasting or its keeping therefor.

E. Traffic Safety Conditions

- E.1 The Applicant shall provide a safe school bus stop, in a location acceptable to the Acton School Committee or its designee, for children who reside in the Revised Project and who attend public school in Acton.
- E.2 Traffic signage shall be consistent with the requirements of the current edition of the Manual for Uniform Traffic Control Devices (MUTCD).
- E.3 Appropriate driveways, sidewalks and curbing, sufficient for the safe separation of pedestrians from moving vehicles, shall be provided throughout the Site to allow safe vehicular and pedestrian access within the site and between all units.
- E.4 The Applicant shall install stop sign and stop bar controls of exit movements from the Revised Project Driveways' "T" intersections with Nagog Park and Westford Lane.
- E.5 All such improvements shall be completed in accordance with the standards set forth in the most recent edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), and shall be in place prior to project occupancy.
- E.6 During construction of the Revised Project, the Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the Site. Any traffic problems that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional construction-related traffic mitigation measures may be required as necessary, or as directed by the Building Commissioner.
- E.7 Subject to the approval of the Massachusetts Highway Department, the Applicant shall implement the following traffic mitigation measures at the intersections of Great Road and Nagog Park in accordance with the Report prepared by Vanasse & Associates, Inc., dated April 15, 2005 (Hearing Exhibit 90): (a) the existing traffic signal phasing will be modified to provide a westbound right-turn overlap for vehicles exiting the site (Hearing Exhibit 90, page 9), and (b) the signal timing shall be modified to optimize traffic operations on all approaches (Hearing Exhibit 90, page 9). The Applicant shall use its best efforts to pursue the approval of the Massachusetts Highway Department for such traffic mitigation measures. The obligations contained in this condition shall expire three years after the issuance of the first building permit for the Revised Project if, despite such best efforts, the Massachusetts Highway Department has not approved such traffic mitigation measures. While this condition is in effect, the Applicant shall provide annual updates to the Board (with a

copy to the Board of Directors of Nagog Woods) as to the status of compliance with this condition summarizing any significant meetings, correspondence and/or report submissions, and any MassHighway responses thereto, since the previous annual report.

F. Common Infrastructure Agreements

- F.1 Because (a) the Revised Project is located in two Towns, Acton and Westford, (b) the Revised Project includes both a Condominium Component (containing condominium units that will be sold to individual owners and common areas and facilities that will be governed and controlled by the provisions of a Master Deed and By-Laws of the Condominium Association representing the unit owners) and a Rental Component (containing apartment units that will be rented to individual owners and common areas and facilities that will be governed and controlled by the legal entity owning and managing the rental), and (c) certain infrastructure and facilities are common to the development of Both Components of the Revised Project and to the development in both Towns, the Applicant shall establish a Master Declaration of Trust, a Reciprocal Easement Agreement and/or a Treatment Plant Operating Agreement (hereinafter collectively referred to as the "Common Infrastructure Agreements" or "CIA"). The ZBA recognizes that the Common Infrastructure Agreements may govern separate aspects of the Revised Project (such as the Operating Agreement for the treatment plant); provided, however, that the Common Infrastructure Agreements shall, in the aggregate, govern all common infrastructure and facilities for the entire Revised Project in both Acton and Westford.
- F.2 The CIA shall, at a minimum, allocate binding legal rights and responsibilities between and among the legal entity owning the Condominium Component (who will in turn duly transfer such rights and responsibilities to the Condominium Association upon its creation) and the legal entity owning and managing the Rental Component of the Revised Project in both Towns for all aspects of establishing, approving, funding, designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, inspecting, repairing, replacing, altering, extending, and removing the following infrastructure and common elements of the Revised Project (collectively the "Common Facilities"):
- a. wastewater treatment and disposal facilities (including, without limitation, the treatment plant, piping, leaching fields and other facilities and appurtenances),
 - b. public water supply facilities,

- c. storm water management and drainage facilities (including, without limitation, any detention or retention basins, discharge outfalls or inlets, and storm water control structures and pipes),
 - d. utilities of all types and kinds including, without limitation, electric, gas, telephone and cable,
 - e. landscaping and landscape irrigation facilities,
 - f. roadways, driveways, sidewalks parking and emergency access facilities (including, without limitation, repaving and repair, snow and ice removal, and removal of any obstructions),
 - g. exterior architectural features,
 - h. solid waste management, collection, recycling, removal and disposal,
 - i. school bus stop facilities,
 - j. on-site conservation, community garden and recreation facilities, and
 - k. any and all other functions and/or facilities that may be necessary or desirable in order to operate the development as a whole.
- F.3 The CIA shall be (a) recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, (b) recorded at the Middlesex North District Registry of Deeds and filed with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. Proof of recording and filing, as applicable, shall be forwarded to the Building Commissioner prior to issuance of any occupancy permit for any building or unit within the Revised Project.
- F.4 The CIA shall run with the land which is the subject of the development, and shall be binding on the owners of the land, and their successors and assigns, in perpetuity.
- F.5 The CIA shall promulgate rules and regulations to govern all aspects of establishing, approving, funding, designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, inspecting, repairing, replacing, altering, extending, and removing the Common Facilities.

- F.6 The CIA shall promulgate rules and regulations to govern assessing and collecting funds and establishing reasonable reserves sufficient for its purposes from the Condominium Association and the owner of the Rental Component of the Revised Project, including the right to enforce these collections by prescribed legal methods.
- F.7 The CIA shall be fully consistent with both the conditions imposed by this Decision and the conditions imposed by the Westford Zoning Board of Appeals as set forth in its Comprehensive Permit for the Westford portion of the Revised Project.
- F.8 The CIA shall irrevocably grant to the Town of Acton and its employees, agents, boards, commissions, and consultants the right to:
- a. enter onto the Site in both Acton and Westford,
 - b. inspect all aspects of the Common Facilities in both Acton and Westford,
 - c. enforce all provisions of applicable law, rules, regulations, and conditions of governmental permits and approvals applicable to the Common Facilities in both Acton and Westford, regardless of where such facilities are located, if the failure to effectuate such enforcement could reasonably affect the Town of Acton, and
 - d. ensure that the Trust or other legal entity or entities established by the CIA is/are fully and effectively performing all of its/their obligations with respect to the Common Facilities in both Acton and Westford.
- F.9 Without limitation, the CIA shall irrevocably grant to the Town of Acton Board of Health and its employees, agents and consultants the right to inspect and to obtain samples from the sewage treatment plant and all facilities, equipment, discharge points, and any monitoring wells associated therewith, and shall irrevocably consent to the Acton Board of Health's right to enforce all applicable environmental and health laws, rules, regulations, and conditions of governmental permits and approvals applicable to the sewage treatment plant serving the residential units in Acton. With respect to a matter under the jurisdiction of the Massachusetts Department of Environmental Protection ("DEP"), in the event of a conflict between or among DEP, the Acton Board of Health and the Westford Board of Health as to appropriate enforcement under this paragraph, the determination of DEP shall control.

- F.10 Except for conservation restrictions that may be accepted by governmental or non-profit entities, the Common Facilities shall remain private and the Town of Acton shall not have any legal responsibility, now or in the future, for designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, repairing, replacing, altering, extending, and/or removing the Common Facilities.

G. Condominium Association

- G.1 For the Condominium Component of the Revised Project, the Applicant shall establish a condominium owners' association (the "Condominium Association") for the 64 condominium units, common areas and facilities that will be governed and controlled by the provisions of a condominium Master Deed and By-Laws.
- G.2 The Master Deed and Bylaws of the Condominium Association shall reference and be subject to the CIA and this Comprehensive Permit Decision.
- G.3 In setting the percentages of beneficial interest in the condominium common areas in the Condominium Master Deed, the Applicant shall ensure that the percentages assigned to the Affordable Units reflect the fair market value of the Affordable Units, taking into account the affordable housing restrictions that encumber said Units.
- G.4 The Master Deed for the Condominium Component shall be recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, and (b) to the extent any portion of the Condominium Component of the Revised Project is situated in Westford, recorded at the Middlesex North District Registry of Deeds and filed with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. Proof of recording and filing, as applicable, shall be forwarded to the Building Commissioner prior to issuance of any occupancy permit for any Condominium Unit within the Condominium Component of the Revised Project.
- G.5 Review of Condominium Documents: Prior to execution and recording of the Master Deed for the Condominium Component and the related documents establishing the condominium, the Applicant shall furnish drafts to Town Counsel for his review as to their consistency with this Decision.

H. Rental Component - Management Entity

H.1 For the Rental Component of the Revised Project, the Applicant (or its successors and assigns) shall either self-manage or shall establish or shall contract with a qualified management entity that shall be subject to and governed by the provisions of this Decision, the CIA, and by By-Laws established pursuant thereto.

H.2 Every deed of all or any portion of the land within the Rental Component of the Revised Project shall reference and be subject to this Decision and the CIA.

I. Surety & Covenants - Common Facilities

I.1 To provide guidance to the Building Commissioner as to when in the construction sequence occupancy permits may issue for separate buildings in the Rental Component of the Revised Project, thereby protecting prospective residents in the project and avoiding disputes with the Applicant, and subject to the requirements of Condition D.1 hereof, the Applicant shall submit to the Building Commissioner a Rental Component Construction Sequencing Plan. With the written approval of the Building Commissioner, which shall not be unreasonably withheld or delayed, the Applicant may modify this Plan so long as the provisions of Conditions I.3, I.4 and I.5 below are satisfied.

I.2 To provide guidance to the Building Commissioner as to when in the construction sequence occupancy permits may issue for separate buildings in the Condominium Component of the Revised Project, thereby protecting prospective residents in the project and avoiding disputes with the Applicant, and subject to the requirements of Condition D.1 hereof, the Applicant shall submit to the Building Commissioner a Condominium Component Construction Sequencing Plan. With the written approval of the Building Commissioner, which shall not be unreasonably withheld or delayed, the Applicant may modify this Plan so long as the provisions of Conditions I.3, I.4 and I.5 below, as applicable, are satisfied.

I.3 Without limitation, as security for the ongoing completion of the Common Facilities and infrastructure for the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for any building or unit in the Revised Project, and no sale or rental of any unit in the Revised Project shall be permitted until:

- a. All wastewater treatment and disposal facilities serving such building and units as shown on the Final Approved Plans have been completed and approved;

- b. All public water supply facilities serving such building and units as shown on the Final Approved Plans have been completed and approved;
- c. The base and binder course for the roadways, driveways, sidewalks and parking areas serving such building and units as shown on the Final Approved Plans have been installed;
- d. All storm water management and drainage facilities serving such building and units as shown on the Final Approved Plans have been installed;
- c. All electric utilities serving such building and units as shown on the Final Approved Plans have been installed;
- f. All emergency access facilities serving such building and units as shown on the Final Approved Plans have been installed; and
- g. For an occupancy permit for any building or unit in the Rental Component of the Revised Project, the Applicant shall have provided to the ZBA a performance guaranty to secure the complete construction of the remaining Common Facilities and infrastructure for the Rental Component of the Revised Project as shown on the Final Approved Plans. Said performance guaranty shall be of a type, in a form, and in an amount as are consistent with the Performance Guaranty Requirements of the Acton Planning Board's Subdivision Rules and Regulations, §§ 6.1-6.2 and shall be released in part or in full in a manner consistent with §§ 6.3-6.4 thereof; provided, however, that all references therein to the Planning Department shall be deemed to refer to the Building Commissioner, and all references therein to the Board shall be deemed to refer to the ZBA for this purpose; and provided further that no reduction in the amount of the performance guarantee shall reduce the performance guarantee to a value below the estimated cost of completing the unfinished portions of the remaining Common Facilities and infrastructure for the Rental Component of the Revised Project as shown on the Final Approved Plans;
- h. For an occupancy permit for any building or unit in the Condominium Component of the Revised Project, the Applicant shall have provided to the ZBA a performance guaranty to secure the complete construction of the remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans. Said performance guaranty shall be of a type, in a form, and in an amount as are consistent with the Performance Guaranty Requirements of the

Acton Planning Board's Subdivision Rules and Regulations, §§ 6.1-6.2 and shall be released in part or in full in a manner consistent with §§ 6.3-6.4 thereof; provided, however, that all references therein to the Planning Department shall be deemed to refer to the Building Commissioner, and all references therein to the Board shall be deemed to refer to the ZBA for this purpose; and provided further that no reduction in the amount of the performance guarantee shall reduce the performance guarantee to a value below the estimated cost of completing the unfinished portions of the remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans.

- I.4 Except as otherwise specifically set forth herein, as security for the final completion of the Common Facilities and infrastructure for the Rental Component of the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for the final residential building in the Rental Component of the Revised Project, and no rental of any unit therein shall be permitted until:
- a. All wastewater treatment and disposal facilities for the Rental Component of the Revised Project have been completed and approved;
 - b. All public water supply facilities for the Rental Component of the Revised Project have been completed and approved;
 - c. The final coat of pavement for all roadways, driveways, sidewalks and parking areas for the Rental Component of the Revised Project as shown on the Final Approved Plans have been installed;
 - d. All storm water management and drainage facilities for the Rental Component of the Revised Project as shown on the Final Approved Plans have been installed;
 - e. All electric utilities for the Rental Component of the Revised Project as shown on the Final Approved Plans have been installed;
 - f. All emergency access facilities for the Rental Component of the Revised Project shown on the Final Approved Plans have been installed;
 - g. All remaining Common Facilities and infrastructure for the Rental Component of the Revised Project shown on the Final Approved Plans has been constructed and or installed;

- h. All conditions of the Comprehensive Permit Decision for the Rental Component of the Revised Project that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner.

I.5 Except as otherwise specifically set forth herein, as security for the final completion of the Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for the final residential building in the Condominium Component of the Revised Project, and no sale of any unit therein shall be permitted until:

- a. All wastewater treatment and disposal facilities for the Condominium Component of the Revised Project have been completed and approved;
- b. All public water supply facilities for the Condominium Component of the Revised Project have been completed and approved;
- c. The final coat of pavement for all roadways, driveways, sidewalks and parking areas for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;
- d. All storm water management and drainage facilities for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;
- e. All electric utilities for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;
- f. All emergency access facilities for the Condominium Component of the Revised Project shown on the Final Approved Plans have been installed;
- g. All remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project shown on the Final Approved Plans has been constructed and or installed;
- h. All conditions of the Comprehensive Permit Decision for the Condominium Component of the Revised Project that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner.

J. Legal Requirements

- J.1 The Applicant and subsequent Owner(s) of all or any portion of the Site shall be bound by all conditions and requirements set forth in this Decision except that those conditions and requirements that apply only to the Condominium Component shall not apply to the Rental Component and those conditions and requirements that apply only to the Rental Component shall not apply to the Condominium Component.. Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that the grantee and its successors and assigns shall agree to be bound by the terms and conditions of this Decision.
- J.2 This Comprehensive Permit may not be transferred to a person other than the Applicant, or to an entity of which the Applicant's members control less than 50%, without the advance written approval of the ZBA and the execution of any instruments or documents that may be required for the perpetual enforcement of this Comprehensive Permit against such person or entity. The scope of the ZBA's review of a proposed transfer shall be limited to the review of the transferee's eligibility, qualifications, experience, and capacity, and the ZBA's approval shall not be unreasonably withheld. In any event, such a transfer shall be in accordance with 760 CMR 31.08(5).

K. Landscaping Conditions

- K.1 Prior to the issuance of the final occupancy permit for the last building in the Rental Component of the Revised Project, the Applicant shall have fully completed the landscaping improvements and plantings shown on the Final Approved Plans for the Rental Component of the Revised Project.
- K.2 Prior to the issuance of the final occupancy permit for the last building in the Condominium Component of the Revised Project, the Applicant shall have fully completed the improvements and plantings shown on the Final Approved Plans for the Condominium Component of the Revised Project.
- K.3 In the event seasonal weather considerations delay the completion of the final "top coat" paving, landscaping improvements and/or plantings shown on the Final Approved Plans, the Building Commissioner may issue the final occupancy permit in question under Condition K.1 or K.2; provided that the Applicant shall complete the final paving and landscaping improvements and plantings as soon as seasonal weather conditions permit, and the Applicant shall post sufficient cash surety with the Town Treasurer for the completion of those improvements should the Applicant fail to do so.

- K.4 The Applicant shall maintain all landscaped areas of the Site as shown on the Final Approved Plans until such time as the Applicant either (1) sells the Site to a new owner subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities pursuant to the CIA to an entity or entities capable of such maintenance. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.

L. Drainage Conditions

- L.1 Storm water shall be managed in accordance with the Massachusetts Stormwater Policy Manual dated March, 1997, as amended from time to time, as prepared by the Massachusetts Department of Environmental Protection and Massachusetts Office of Coastal Zone Management.
- L.2 All storm water drainage basins shall be located as to facilitate the maintenance and operation of the basins or drainage utilities.
- L.3 The Applicant shall prepare a plan for and shall maintain and repair the drainage structures and storm water management system on the Site as shown on the Final Approved Plans until such time as the Applicant either (1) sells the Site to a new owner subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities pursuant to the CIA to an entity or entities capable of such maintenance.

M. Parking and Garages

- M.1 The Revised Project shall provide for on-site parking as shown on the Final Approved Plans, and each Affordable Unit and each comparable Market Rate Unit shall have the same reasonable access to on-site open air parking. Garages on the Final Approved Plans may be rented separately to residents and are not subject to the affordability requirements.
- M.2 No on-site parking shall be sold to, rented to, licensed to or otherwise conveyed to persons who are not occupants of a unit located on the project Site.

N. Outdoor Lighting

- N.1 The Applicant shall comply with Outdoor Lighting site design standards for site plan special permit as set forth under Section 10.4.3.2 of the Acton Zoning Bylaw.
- N.2 The Applicant shall obtain the Building Commissioner's approval of an outdoor lighting plan consistent with that section prior to the issuance of

any occupancy permits, such approval not to be unreasonably withheld or delayed.

O.. Sewage Treatment System and Irrigation Well System

- O.1 The sewage treatment plant serving the 296 rental units and the 64 condominium units in Acton shall be designed and constructed as shown on the Final Approved Plans and as approved by the Department of Environmental Protection.
- O.2 Prior to the issuance of an occupancy permit for any residential unit in the Revised Project, the sewage treatment plant shall be fully operational and shall have received an approval for such operation from the Department of Environmental Protection.
- O.3 The Applicant shall provide to the Acton Building Commissioner and the Acton Board of Health a copy of the final approval of the sewage treatment plant and associated groundwater discharge permit by the Department of Environmental Protection and the Westford Board of Health.
- O.4 Prior to issuance of the first occupancy permit for any residential building in the Acton portion of the Revised Project, the Applicant shall deposit eighteen thousand dollars (\$18,000) into a fund to be available to and administered by the Acton Health Department to inspect and monitor the construction of the sewage treatment plant and the connection of the buildings to the collection system, and this shall be the only fee payable to the Board of Health for these purposes. Pending the recording and/or registration of the Common Infrastructure Agreements under Condition F.3 of this Decision, the Applicant shall irrevocably grant to the Town of Acton Board of Health and its employees, agents, and consultants the right to:
- a. enter onto the Site in both Acton and Westford,
 - b. inspect all aspects of the construction of the sewage treatment plant and related facilities in both Acton and Westford,
 - c. enforce all provisions of applicable law, rules, regulations, and conditions of governmental permits and approvals applicable to the Common Facilities in both Acton and Westford, regardless of where such facilities are located, if the failure to effectuate such enforcement could reasonably affect the Town of Acton, and
 - d. ensure that the Applicant is fully and effectively performing all of its obligations with respect to the construction of the sewage treatment plant and related facilities in both Acton and Westford.
- O.5 Of the 296 rental units in the Rental Component of the Revised Project, no unit shall contain more than two bedrooms; 160 units shall contain two bedrooms; 136 units shall contain one bedroom; all as "bedroom" is

defined by Title V. The CIA shall contain a provision specifying the bedroom count consistent with this provision and prohibiting any unit from containing more than two bedrooms.

- O.6 Of the 64 condominium units in the Condominium Component of the Revised Project, each unit shall contain two and only two bedrooms as "bedroom" is defined by Title V, 310 CMR 15.00. The CIA and the Master Deed for the Condominium Component of the Revised Project shall contain a provision specifying the bedroom count consistent with this provision and prohibiting any unit from containing more than two bedrooms.
- O.7 The Applicant shall contemporaneously provide to the Acton Board of Health copies of all written communications, reports, submissions, and other documents sent by the Applicant to or received by the Applicant from the Department of Environmental Protection concerning the waste water treatment plant and/or the related groundwater discharge permit (unless the Town was also in receipt of such documentation directly from DEP).
- O.8 Without limitation, the Applicant shall contemporaneously provide to the Acton Board of Health any financial reports submitted or required to be submitted to DEP regarding the operation and maintenance of the waste water treatment facility, any financial security which serves as a source of funding for immediate replacement or repair of the treatment plant and/or associated facilities, any capital reserve account for the waste water treatment facility, and any expenditures from and replenishment to that security and that capital reserve account.
- O.9 Irrigation wells for the Revised Project are subject to the following conditions:
- a. Each irrigation well for the Revised Project shall be a bedrock well;
 - b. Each irrigation well for the Revised Project shall be metered and an annual report of the well's usage shall be provided to the Acton Board of Health;
 - c. Each irrigation well located in Acton and associated facilities located in Acton shall at a minimum conform to Acton Board of Health's Regulations 9-2, 9-3, 9-4, 9-5 and 9-6.1 through 9-6.3.1;
 - d. Each irrigation well located in Westford, the water from which shall be used to irrigate land in Acton, and all facilities

associated therewith, shall at a minimum conform to Acton Board of Health's Regulations 9-2.2 to 9-2.11, 9-3, 9-4, 9-5 and 9-6.1 through 9-6.3.1; and

e. Prior to the installation of any irrigation well and associated facilities for the Revised Project, the Applicant shall submit a detailed plan to the Acton Board of Health showing all irrigation wells, lines, pump stations, and associated facilities so that the Board of Health can verify compliance with these requirements.

P. Use Requirements

- P.1 As this Comprehensive Permit Decision grants permission to build the Revised Project on the Site under the comprehensive permit statute, G.L. c. 40B, §§ 20 - 23 (the "Act"), and as the Applicant has obtained the benefits of a comprehensive permit including the right to construct and use the Revised Project in a manner that is not in compliance with the Town of Acton's zoning requirements which otherwise would be applicable to the Site and the Revised Project but for the Comprehensive Permit's override of local bylaws to promote affordable housing, no use shall be made of the Site or of any building or unit on the Site erected pursuant to this Comprehensive Permit except for (a) residential use consistent with this Decision, and (b) accessory uses customarily incidental to such residential use in Acton.
- P.2 Notwithstanding the Zoning District in which the Site is located, as long as this Comprehensive Permit is in force and effect, no business or commercial use shall occur or be conducted on the Site or in any building or unit on the Site except for (a) necessary unit sales, rental and management activities with respect to the Revised Project and (b) accessory concierge services for residents of the Revised Project including such services as an automatic teller machine, a dry cleaning pick-up and drop off location, one or more express mail pick-up and drop off boxes, a photocopy or fax machine, and similar accessory concierge services for the convenience of the residents of the Revised Project.
- P.3 Without limitation, no building, housing unit, or any other portion of the Site shall be used for temporary or transient housing, including but not limited to any type of hotel, motel, casino, or extended stay hotel or motel, any housing or shelter that would be subject to the licensing provisions of General Laws Chapter 140, Sections 1 through 40, as amended from time to time.